



**THE CYPRUS INTERNATIONAL TRUST
A PRACTITIONER'S APPROACH**

2020

CONTENTS

A. GENERAL

- I. THE LAWS APPLICABLE TO TRUSTS – GENERAL PROVISIONS
- II. DEFINITION AND NATURE OF TRUST
- III. CLASSIFICATION OF TRUSTS
- IV. FORMALITIES TO BE FULFILLED IN ORDER TO CREATE A VALID EXPRESS TRUST
- V. PROVISION OF TRUSTEE SERVICES
- VI. PROCEDURAL ISSUES
- VII. CONFIDENTIALITY ISSUES

B. THE CYPRUS INTERNATIONAL TRUST

- I. THE CONDITIONS TO BE MET IN ORDER TO HAVE A CYPRUS INTERNATIONAL TRUST
- II. DEFINITIONS IN THE CYPRUS INTERNATIONAL TRUSTS LAW
- III. CREATION DURATION AND REVOCATION OF A CYPRUS INTERNATIONAL TRUST
- IV. CONTENTS OF THE TRUST DEED
- V. VARIOUS PROVISIONS OF THE CYPRUS INTERNATIONAL TRUST LAW
- VI. BENEFICIAL USES OF TRUSTS
- VII. INFORMATION REQUIRED TO SET UP A CYPRUS INTERNATIONAL TRUST

C. CONCLUSION

A. GENERAL

I. THE LAWS APPLICABLE TO TRUSTS – GENERAL PROVISIONS

The Laws

The legal framework governing trusts in Cyprus is based on The Trustees Law, Cap. 193, (**"The Trustees Law"**), which is largely based on the English Trustee Act of 1925 and on The International Trusts Law, No. 69(I)/92, (**"The International Trusts Law"**), enacted in July 1992 and amended with the International Trusts (Amending) Law, No. 20(I)/2012.

In addition to the above enactments, Cyprus has ratified with the law No. 4(III) / 2017 the Hague Convention on the law applicable to trusts and on their recognition, hereinafter referred to as **"The Hague Convention on Trusts"** which is a convention related to conflict of laws issues and sets out rules as to the recognition of trusts of one jurisdiction to another.

Common Law¹ and the **Principles of Equity**², are also applicable, being one of the sources of the Cyprus legal system as per article 29 (1) (c) of the Courts' of Justice Law no. 14/60 as amended, provided they do not come in conflict with local statutes.

Types of trusts established in Cyprus

The main types of trusts that may be established in Cyprus are the Cyprus "local trust" and the "Cyprus international trust". A local trust is a trust of which either the settlor or one of the beneficiaries are residents of Cyprus. A Cyprus international

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1. **"Common law"** is the body of legal rules, based upon court decisions and not on statutory law made by a parliament, embodied in reports of decided cases, that has been administered by the common-law courts of England since the Middle Ages. Common laws vary depending on the jurisdiction, but in general, the ruling of a judge is often used as a basis for deciding future similar cases.
 2. **"Principles of Equity"** are set of rules which rectify injustice done by the rigid application of court precedents and statutory law. It is the rectification of legal justice.

trust is a trust which is established under the provisions of The International Trusts Law and meets the conditions mentioned there in and explained further below.

A third type of trust is the foreign or offshore trust which is set up by foreigners for the benefit of foreigners and does not meet the conditions to be classified as local trust or Cyprus international trust but has as chosen proper law applicable to it, Cyprus law.

Applicability of the various enactments to the various types of Cyprus trusts

The Trustees Law, the Common Law and the Principles of Equity, apply to local trusts and to Cyprus international trusts. The provisions of The International Trusts Law apply exclusively to the Cyprus international trust.

In case there is any inconsistency between the provisions of The Trustees Law, Common Law or Equity and the provisions of The International Trusts Law, the provisions of the International Trusts Law prevail as to Cyprus international trusts as being a special law regulating particular type of trusts.

In case of a foreign trust which has chosen as its proper law the law of Cyprus, then what legal environment is applicable to local trusts applies as well to this type of trusts.

The subject matter of this publication

With this publication we shall deal initially with the general legal environment on trusts, and then we shall deal extensively with the Cyprus international trust.

II. DEFINITION AND NATURE OF TRUST

The trust is the most important legal concept created by Equity and one of the greatest achievements of English jurisprudence. It has been created by Equity to prevent injustice administered by the rigid application of Common Law or statute.

The gist and magnificence of trusts is that they permit a division in the ownership of the property subject matter of the trust, between the trustee and the beneficiary(ies) in such a way that the trustee is compelled to act to the best interest of the beneficiary(ies) in relation to the use and management of that property.

It is very difficult to construct a comprehensive definition of what a trust is and this is because of the variety of the trusts that can exist and the variety of ways that can be created.

In view of the above-mentioned complications, there is not yet a satisfactory definition in the various laws applicable to trusts as to the meaning of trust.

Having in mind the various attempts, laws and court decisions in place as to what it might be the meaning of trust and taking also into consideration the Common Law and Equity approach, it may be said that a trust is the relationship which arises, expressly, impliedly or constructively, where a person called the trustee, is compelled in Equity by the courts or by the terms of a particular trust deed or will, to hold property, whether real or personal and whether by legal or equitable title,

- (i) for the benefit of some persons, the beneficiaries, irrespectively if the trustee is also a beneficiary of the trust; and/or,
- (ii) for any purpose, but in such a case of a "purpose trust" not exclusively to the benefit of the trustee but to the beneficiaries or for other objects of the trust.

Also based on the general nature of the trust, a more simple definition may be put forward, that a trust is the relationship by which, a person to whom property is vested is compelled in Equity to hold the property for the benefit of another person or for some purpose other than his own.

III. CLASSIFICATION OF TRUSTS

There are mainly three principal types of trusts: the express trusts, the resulting trusts and the constructive trusts. All trusts that are not express, may be classified as implied trusts.

Subject to their purpose may be classified as purpose trusts or charitable trusts and subject to the discretion and powers granted to the trustee may be also classified as fixed or discretionary.

Trusts may be created during life time, (inter – vivos), or on death by a will.

Main types of trusts

Express trusts are those created by the express clear intention of the settlor (intentionally), or the express and clear declaration of the person to whom the property is vested, the trustee, to the benefit of a particular beneficiary or for a purpose.

Resulting trusts are implied by the court – they are not created intentionally by the settlor. In this type of trust the beneficial interest in the property comes back (results) to the person, (settlor), who provided the property or to his estate and for this reason are classified as resulting trusts.

Constructive trusts arise by operation of law. Such trusts are created irrespective of the intention of the parties in order to satisfy the demands of justice. When property is held by a person in such circumstances which constitutes an abuse to hold it or creates injustice, then Equity converts the holder into a constructive trustee for the benefit of the person the property should be.

Other types of express trusts

Charitable trusts are those which are created for a charitable purpose(s). There is though no legal definition of what constitutes a charity as per The Charities Law Cap.41.

Charitable trusts may be created by any deed, will or other document provided it has as its object charitable purposes. Such document is registrable as per the provisions of The Charities Law Cap. 41. The trustees may apply to the Council of Ministers to be registered with the aim to receive legal personality for such charitable institution.

A charitable trust may be set up as well as per the provisions of The International Trusts Law provided, it meets the requirements mentioned therein.

Local charitable trusts established pursuant to the Charities Law Cap. 41, are enforceable by the Attorney General of the Republic on behalf of the state, while charitable trusts formed pursuant to The International Trusts Law are enforceable as per the terms of the trust deed establishing them.

Purpose trusts are those trusts which have no - beneficiaries, but instead exists for advancing some non-charitable purpose of some kind. A charitable trust in effect, is a purpose trust for charitable purposes.

Fixed trusts are those trusts where the share or interest of the beneficiaries in the trust property is specified by the settlor and cannot change. That is, the trustee is bound to make a distribution of the trust property to the beneficiaries in a fixed or predetermined manner, as set out in the trust deed. The fixed entitlement may be a specified fraction or a percentage.

Discretionary trusts are those trusts where the entitlements to the trust fund are not fixed but are determined by the trustee according to relevant criteria set out in the trust deed by the settlor. In effect, the trustee has the discretion as to whether and how much of the trust property to distribute to the beneficiaries. In discretionary trusts the beneficiaries only have contingent rights to the trust property. They cannot claim the trust property at any time. The allocation of the trust property is entirely at the discretion of the trustee. Discretionary trusts can only arise as express trusts. It is not possible for a constructive trust or a resulting trust to arise as a discretionary trust.

IV. FORMALITIES TO BE FULFILLED IN ORDER TO CREATE A VALID EXPRESS TRUST

Legal Validity

In order to create a valid express trust, the settlor, who is transferring the property to the trustee, must be competent to do so, namely, at the time of the transfer he/she must be of age and mentally sound as per the law of the country, he/she is resident.

In principle, there are no formalities, which are required for the creation of an express trust, except where the trust is created by a will, in which case the particular requirements for the creation of a valid will must be adhered to.

The express trusts and charitable trusts though, must satisfy, in addition to the above, the requirements of the so called, **three certainties**:

- (i) Certainty of intention;
- (ii) Certainty of subject matter; and
- (iii) Certainty of objects.

The settlor must manifest an intention to create a trust. The trust property must be specified with reasonable certainty and the beneficiaries of the trust must be ascertainable. This last requirement is waived in the case of a purpose / charitable trust as identified in the Law.

In order to set up an express or charitable trust, a trust deed must be drafted and signed between the settlor and the trustee in which the conditions under which the trust property will be transferred to the trustee and held by it are identified.

Trusts do not have legal personality. In this respect, whatever is to be done for the trust is done through the trustee acting not in his/her personal capacity but as the trustee of the relevant trust.

Bank accounts are also opened in the name of the trustee who acts again not in his/her personal capacity but as the trustee of the relevant trust.

A trust may have any decent name and there is no official procedure of approving the name selected.

V. PROVISION OF TRUSTEE SERVICES

Regulated activity

The administration or management of trusts, including, the undertaking or provision of trustee services, irrespective of where the trust was established or the provision of services of administration or investment or disposal of the assets of a trust are exercised, once such services are offered in or from Cyprus, are regulated activities subject to the provisions of the Law Regulating the Businesses Providing Administrative Services and Related Matters of 2012, Law No. 196(I)/2012, as amended, hereinafter referred to as the "**Fiduciaries Law**".

Such activities may be offered only by licensed legal persons pursuant to a licence granted by the regulating authority which is the Cyprus Securities and Exchange Commission or may be offered by exempted persons as these are identified in the Fiduciaries Law, namely lawyers, members of the Cyprus Bar Association and accountants, members of the Institute of Certified Public Accountants of Cyprus and their subsidiaries.

Provision of administrative trustee services by physical persons

The provision of administrative trustee services by physical persons in the below cases, does not require the obtaining of relevant licence, provided that such administrative services are not advertised or used in order to attract clients, nor will they be offered or provided to other persons, other than those specified further below:

- (i) The provision of the services of a trustee when the person providing the trustee services is the settlor or where all the beneficiaries of the trust are himself and or his/her spouse and/or his/her family members and/or his/her spouse's family members, up to the fourth degree of relation; or
- (ii) Being a trustee in a trust created under a will of a physical person.

VI. PROCEDURAL ISSUES

Registers for trusts

The Fiduciaries Law provides that The Cyprus Bar Association, The Institute of Certified Public Accountants of Cyprus and The Cyprus Securities and Exchange Commission, maintain registers of trusts where particular limited information as to established trusts in Cyprus is submitted.

For trusts managed by lawyers members of the Cyprus Bar Association, the information is submitted to the Cyprus Bar Association, for trusts managed by accountants members of The Institute of Certified Public Accountants of Cyprus, the information is submitted to The Institute of Certified Public Accountants of Cyprus and for all other trusts not fallen in the above categories, to The Cyprus Securities and Exchange Commission.

VII. CONFIDENTIALITY ISSUES

Information given to the regulating authorities upon registering a trust

Upon registering a trust with the appropriate regulating authority, the following information must be submitted:

- (i) The name of the Trust;
- (ii) The names and addresses of the Trustees;
- (iii) The date of establishment of the Trust;
- (iv) The date of change of the proper law of the Trust, if any; and
- (v) The date of termination of the trust once taken place.

In addition, by strict provision of the Fiduciaries Law, this information is NOT open to the public, but only to the regulating authorities. No information as to the content of the trust deed or the settlor or the beneficiaries are given which are kept in strict confidence.

Provision of trustee services – continued obligation as to what information must be kept available

Any person providing trustee services, administers and manages trusts, must collect and have at all times available in Cyprus for possible disclosure to the relevant regulatory authority the following information, where applicable:

- (i) the identity of all trustees;
- (ii) the identity of the settlor;
- (iii) the identity of all beneficiaries or information on the class of beneficiaries;
- (iv) the identity of the protector (if applicable);
- (v) the identity of the fund manager, accountant, tax official (if applicable);
- (vi) the activities of the trust; and,
- (vii) The identity of any other person who exercises control over the trust.

***(Our Comment:** The above obligation of disclosure to the relevant regulatory authority is limited to the items specified there in as per the provisions of the Fiduciaries Law as amended. The International Trusts Law in the case of Cyprus international trusts imposes further strict confidentiality obligations on the persons dealing with Cyprus international trusts as further below analyzed).*

Strict confidentiality as to disclosure of documents or information related to Cyprus international trusts

Confidentiality takes a prominent position in the Cyprus International Trusts Law. The trustees, the protector, the trust enforcement supervisor or any other person dealing with Cyprus international trusts are not allowed to disclose any information or documents to any person not allowed by law to receive it, unless a court order is issued, by which:

- (i) the names of the settlor or any of the beneficiaries are disclosed;

- (ii) the trustees' 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 Cyprus international trust were performed are disclosed;

Likewise, the disclosure of the reason for any particular exercise of such power or discretion or performance of duty, or the material, upon which such reason will be or might have been based, is prohibited.

Furthermore, confidentiality extends to anything forming part of the accounts of a Cyprus international trust.

In the case of the accounts of the trust, the trustee has the power to disclose such information to the beneficiaries only in the case it considers that such a disclosure safeguards the best interests of the trust.

Notwithstanding the above, where there is a pending criminal prosecution or civil litigation, the court may issue an order for disclosure of information as above, provided it will be satisfied that such an order is of paramount importance for the outcome of the court proceedings.

***(Our Comment:** The International Trusts Law with this provision has imposed further conditions while a court will consider to issue a disclosure order. In this respect, before a court will grant a disclosure order related to a Cyprus international trust the additional conditions imposed by the law as above must be met. Such conditions are not in place in regular court cases in the absence of a Cyprus international trust in the structure when disclosure orders (Norwich Pharmacal orders) are issued.*

In this respect a Cyprus international trust in corporate structures gives additional protection in case of court proceedings).

The disclosure of beneficiaries - obligation as per the 5th AML directive

As per the 5th AML EU Directive, (the "Directive") member states should have imported this Directive to local legislation by 10 January 2020.

As per the provisions of the Directive, each company / legal entity, MUST declare its ultimate beneficial owners, physical persons, holding more than 25% of beneficial interest in the company / legal entity, to the public registry of beneficiaries for companies / legal entities, the "Companies' Registry", that it will be created for this purpose and their names will be open to the public.

Details will be available once the Directive will be implemented in local legislation. For the time being this directive has not been implemented in Cyprus but it is expected to be done the soonest possible as Cyprus currently is in breach of the relevant EU Directive.

The Companies' Registry, will be open to the public and in this respect, any person or governmental authority, may have access and get the information as to who the ultimate beneficiaries of companies are, holding more than 25%.

Nominee corporate structures

In those companies where nominee shareholders are used, the ultimate beneficial owners holding 25% plus one share, will be disclosed to the Companies' Registry and the information therein will be accessible to the public.

Trust corporate structures

The Directive creates a separate registry for trusts. This is the trust registry for beneficiaries of trusts, the "Trusts' Registry". In this case, the trustees of a particular trust are obliged to disclose in the Trusts' Registry to be created, the ultimate beneficiaries of the particular trust. The difference with the Companies' Registry, is that the Trusts' Registry, will not be open to the public.

Which trusts to be disclosed?

The disclosure obligations will apply to trustees of express trusts administered in a member state (regardless of the governing law of the trust).

The obligation of disclosure is in place regardless of whether the trusts have taxable consequences in the member state as the 4th AML directive provided.

The trustees will need to register beneficial ownership information on all existing trusts as well as new trusts created after the legislation comes into effect.

The Directive will also extend the registration obligation to non-EU trustees of express trusts which form a business relationship or acquire real estate in a member state. The Directive applies the same obligations to persons holding equivalent positions in other types of legal arrangements having a structure or effect similar to trusts, such as "fiducie" and certain types of "Treuhand" or "fideicomiso" – the French, German and Spanish fiduciary notions similar to trusts respectively).

Conditions for having access to the Trusts' Registry

As per the Directive, only the authorities and persons that can demonstrate legitimate interest and proving same through relevant procedure to be implemented, may have access to the Trusts' Registry. The conditions for the "legitimate interest" test, must be defined in the law by each individual member state.

Access to the Trusts' Registry must also be granted to any member of the public in relation to a trust which holds or owns a controlling interest in a company that is not incorporated in the EU (and is therefore not included in any member state's register of Companies' Registry).

Member states must put in place mechanisms to ensure that information on beneficial ownership in the registers of companies and trusts is "*adequate, accurate and current*"; and member states will have to ensure interconnection between each member states' registers of companies and trusts via an EU "Central Platform". The Trusts' Registry must have been set up by the 10th of March 2020. So far nothing has been set up.

Important Difference of the two corporate structures – Nominee / Trust

The corporate structure where trust is used as shareholder and not a nominee shareholder, gives additional protection to the ultimate beneficial owners as their identity will not be open to the public at large BUT only if legitimate interest is shown and accepted by the regulating authority under certain procedure to be provided.

It remains to be clarified by the law / regulations implementing the Directive how this will be achieved. Certain legal or other procedures to be followed will be set down in

order to disclose the information related to the beneficiaries of a trust, to those proving legitimate interest.

(Our Comment: *There might be complications subject to the way the Directive will be implemented. If a company has as its shareholder a trust, (not a nominee shareholder), the proper approach to follow in such a case, would be the company officials to declare to the Companies' Registry only the name of the trust in place. In such a case, the beneficiaries of the trust will not be disclosed in the Companies' Registry. The implementing law should direct that the beneficiaries of a trust should be disclosed only in the Trusts' Registry.*

If the beneficiaries of a trust are disclosed in the Companies' Registry, the provisions of the Directive to be implemented as to the beneficiaries of a trust, providing that such information is given only upon proof of legitimate interest, will be defeated as the Companies' Registry will be open to the public.

So far though, there has not been any governmental guidance as to this possible complication and how they will implement the Directive.

We expect that the provisions of the Directive will be honoured and the beneficiaries of a trust will not be disclosed without the appropriate procedure showing legitimate interest as is provided in the Directive.

Our view is that the beneficiaries of a trust should be declared ONLY in the Trusts' Registry and not in the Companies' Registry as otherwise the clear provisions of the Directive will be defeated).

B. THE CYPRUS INTERNATIONAL TRUST

The Cyprus International Trusts Law has been enacted in 1992 and has been extensively amended in 2012. With its current form this law, gave Cyprus the characterization as one of the best jurisdictions for the creation of international trusts due to their numerous benefits compared to other jurisdictions.

I. THE CONDITIONS TO BE MET IN ORDER TO HAVE A CYPRUS INTERNATIONAL TRUST

The following conditions must be met in order to have a Cyprus international trust:

- (i) The settlor, whether a physical or legal person, must not be a resident of Cyprus during the calendar year, which precedes the year of creation of the trust; AND
- (ii) The beneficiaries, either physical or legal persons, with the exception of a charitable institution, must not be resident of Cyprus during the calendar year, which precedes the year of creation of the trust; AND
- (iii) At least one of the trustees is, throughout the life time of the trust, resident of Cyprus.

The term resident of Cyprus has the meaning given to it by the Income Tax Laws of Cyprus.

As provided in the Income Tax Laws, a physical person is considered tax 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 tax resident of Cyprus if its management and control is exercised in / from Cyprus.

II. DEFINITIONS IN THE CYPRUS INTERNATIONAL TRUSTS LAW

Trust. See definition of trust at pages 4-5.

Trustee. The notion of the trustee includes any legal or physical person who holds the trust property to the benefit of the beneficiaries, irrespectively if the trustee is also a beneficiary and / or holds the trust property for a purpose, but in such a case, (purpose trust), holds the trust property not exclusively to the benefit of the trustee.

Settlor. Means a legal or physical person who grants trust property or disposes property in trust or for the purpose of a will under trust terms.

Beneficiary. Means, a legal or physical person, including a person not yet born at 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. Means 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 its powers or with regards to the right of the protector to consent or to veto the decisions of the trustee and also includes the power to appoint or cancel the appointment of the trustee.

Trust enforcement supervisor. Means the person or persons whose duty is to secure the execution of a Cyprus international trust not for a charitable purpose as per clause 7(3) of The Cyprus International Trusts Law.

Trust Property. Means the property that at the relevant time is held by the trust. The trust property can include all kinds of assets, movable or immovable, situated anywhere in the world, provided that the trustee has legal control and ownership of the assets. Immovable property situated in the Republic of Cyprus, may also form part of the trust property of a Cyprus international trust provided certain provisions of The Immovable Property Law, Cap. 224 as amended are met.

Definition of other various terms. The meaning of: "objects of a discretionary Trust", "judgment", "creditor", "disposal", "right to an estate", "intention to defraud", "purpose trust", "personal relationship", "obligation", are also defined in the Cyprus International Trusts Law, clause 2, among other terms.

III. CREATION DURATION AND REVOCATION OF A CYPRUS INTERNATIONAL TRUST

Capacity to create a Cyprus international trust

According to the International Trusts Law, a settlor is deemed to have the ability to dispose of assets to a Cyprus international trust if at the time of such transfer he/she is of full age and of sound mind under the law of the country in which he/she is resident.

Duration of a Cyprus international trust

A Cyprus international trust may continue in perpetuity. **The Equitable rule against perpetuities** applicable to trusts in general, has been excluded.

The rule against perpetuities is a legal rule of Equity that prevents people from using legal instruments (usually a deed or a will) to exert control over the ownership of private property for a time long beyond the lives of people living at the time the instrument was written. Specifically, the rule forbids a person from creating future interests in property that would vest beyond 21 years after the lifetimes of those living at the time of creation of the interest. In essence, the rule prevents a person from putting qualifications and criteria in a deed or a will that would continue to affect the ownership of property long after he or she has died.

Life in being means the remaining life of a person who is in existence at the time when a deed or will takes effect. This phrase is mainly used in common law and statutory rules against perpetuities. This common law doctrine limits a person's power to control the ownership and possession of property. This also ensures that there is a transferability of property.

(Our comment: The rule against perpetuities, apply to local trusts while this rule is not applicable to Cyprus international trusts. In effect, no local trusts, with the exception of charitable trusts, may continue in perpetuity. The maximum period of perpetuity is the period of life or lives in being plus 21 years or where there is no life in being, for 21 years).

Revocability of a Cyprus international trust

By clear provision in the Cyprus International Trusts Law, an international trust is deemed irrevocable. The trust may be revoked only if it is clearly provided for such an option in the trust deed.

Meaning of revocability

Revocation is the reserved power of the settlor to cancel the trust and in such a case the property to be returned to him.

(Our comment: A power to revoke the trust, may raise complications related to classifying the trust in a foreign jurisdiction as a sham trust and consequently void. In such a case, complications may arise if the trust property is situated outside Cyprus and is the subject of a dispute. In addition, the property of a revocable trust might be subject matter to the claims of the settlor's creditors and this is more likely to happen when the settlor is also a beneficiary).

IV. CONTENTS OF THE TRUST DEED

The trust deed establishing the Cyprus international trust normally includes, among others, the following clauses:

- (i) Various definitions as to the parties involved and the meaning of various notions used in the trust deed;
- (ii) Clarifications as to the trust property, income and capital;
- (iii) The duration of the Trust, if any;
- (iv) Statement as to who the beneficiary(ies) are;

- (v) The powers and duties of the trustee, protector and trust enforcement supervisor;
- (vi) A provision as to the reserved powers of the settlor, if any;
- (vii) A provision as to the applicable law governing the trust;
- (viii) A provision as to the way the trust may be amended;
- (ix) A provision as to the ultimate default trusts;
- (x) Provisions as to the liabilities of the trustee, the retirement of the trustee, the appointment of new or additional trustee, the indemnity of retiring trustee and protector, withdrawal, retirement and appointment of protector and remuneration for the trustee and other officers;
- (xi) A provision for the preparation of accounting records; and
- (xii) Confidentiality and non-disclosure issues.

V. VARIOUS PROVISIONS OF THE CYPRUS INTERNATIONAL TRUSTS LAW

Possibility for the settlor and beneficiaries to relocate to Cyprus after the establishment of the Cyprus international trust

The Cyprus International Trusts Law gives the opportunity to the settlor and to the beneficiaries to relocate to Cyprus and become tax residents of Cyprus on the condition that neither of them were residents of Cyprus during the calendar year which precedes the year of the establishment of the trust.

Such relocation, if takes place, does not affect the validity of the Cyprus international trust.

Owning of immovable property in Cyprus.

The Cyprus international trust may also own immovable property situated in Cyprus. The provisions of The Immovable Property Law Cap. 224 must be met though.

Charitable Trusts – Purpose Trusts

The Cyprus International Trusts Law lists the purposes which give rise to the creation of a charitable trust.

The Cyprus International Trusts Law also recognizes trusts established for a particular purpose (purpose trusts) and such a trust is enforceable by the settlor or his personal representatives or the trust enforcement supervisor under certain conditions.

Blind trusts and charitable trusts

Special consideration must be given in the cases of charitable / purpose trusts so that the trust to be created not to be a **blind one**. A blind trust is a trust where it is not possible to ascertain the purpose of the trust or who the beneficiaries are from the trust deed. Usually in such cases a dummy settlor donates a nominal sum to the trust and the beneficiaries usually are well known charities such as the Red Cross or others, as the discretionary beneficiaries of the trust. Under the trust deed the trustees may appoint additional beneficiaries as and when they decide.

This structure gives the possibility of hiding the real beneficiaries behind a charity veil who appear at a later stage if the circumstances permit it.

The charitable institutions identified as beneficiaries usually are not informed of this charity / trust and not are they likely receive any material benefit.

Such trusts may be easily held invalid in both jurisdictions, of the settlor and the trustee, as being formed for not real charitable purpose. Such trusts are void ab initio and later transformation to real charities does not save the situation³. Such fake charities usually are characterised as sham trusts or legally, might be characterised as agency structures or nominee arrangements.

³ *Evan Wahr-Hansen v British Trust Company and Others, Court of Appeal, Cayman Islands Civil Appeal No 4 of 1996 & No 1 of 1997 (1997/98 1 O.F.L.R. at 787).*

Approved investments by the Trustees

The Cyprus International Trusts Law gives 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.

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 regarding the trust and such an application may be filed by the trustee, protector, trust enforcement supervisor or any other interested person.

Enforceability of a foreign Trust in Cyprus

Foreign trusts are enforceable in Cyprus unless the court declares that they contravene public policy and order.

Express duty of the Trustee

The trustee is obliged to comply and apply the provisions of the legislation as to the Prevention and Suppression of Money Laundering Activities Law, No.188 (I)/2007 and hence is obliged to carry out proper due diligence by implementing the "know-your-client" principle and maintaining an adequate record-keeping procedure.

Retrospective effect of the Law

The provisions of the Cyprus International Trusts Law, 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.

Exclusive jurisdiction of Cyprus law as to the validity of Cyprus international trusts and other matters

Any matters in relation to the validity, interpretation, amendments, revocation, powers of trustees, protectors, or trust enforcement supervisors and inter alia administration of a Cyprus international trust, are determined in accordance to the law in force in Cyprus without reference to the applicable law of any other jurisdiction. The list of matters which are exclusively determined by Cyprus law are identified in Section 3(1A) of the Cyprus International Trusts Law.

Governing law of the Cyprus international trust

Cyprus international trusts, as per clause 12A (3) of The Cyprus International Trusts Law are governed by the law which the settlor has chosen to be governed according to the terms of the trust deed. Where no applicable law has been chosen, the trust is governed by the law to which the trust is more closely related to. There are certain guidelines in the Cyprus International Trusts Law enabling the court to identify the law to which the trust is more closely related to.

The choice though has the limitation that the validity and other matters as these are identified in clause 3 (1A) of The Cyprus International Trusts Law are governed exclusively by Cyprus Law, irrespectively of the provisions of the foreign law chosen.

Exclusion of forced heirship rights and rights arising by virtue of a personal relationship

Further, the existing Cypriot legislation or the legislation of any other country regarding the succession to inheritance does not affect, according to the Cyprus International Trusts Law, section 3(1A) in the proviso and section 3(4), the transfer or disposal of property to the Cyprus international trust or the validity of the Cyprus international trust, in any way.

In effect, the terms of The International Trusts Law prevail over any legal provisions as to the inheritance of property in case of the death of the settlor.

Cyprus forced heirship rights do not apply also to Cyprus local trusts once validly established. The reason is that the property transferred to the trust is not property of the deceased but legally belongs to the trustees, (legal owners), and beneficially to the beneficiaries, (beneficial owners).

Furthermore, as per section 3(4), the validity of the Cyprus international trust is not affected or the eligibility of any settlor, trustee, trust enforcement supervisor, protector, and 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 of property (i) cancels any 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 of property is contrary to any law, judgment or order of any other jurisdiction.

The succession laws of the Republic of Cyprus or of any other country shall in no manner affect the transfer or disposition of trust property to be made pursuant to the terms of a Cyprus international trust and the validity of such transfer or disposition cannot be challenged.

In effect, in case of the death of the settlor, any transfer or disposition of trust property to the trustees or identified beneficiaries, cannot be challenged based on the succession laws of Cyprus or of any other country.

(Our Comment: *Cyprus is bound by the EU Succession Regulation No. 650/2012 of 4 July 2012 which came into force on 17 August 2015 and which states that the law of a deceased last place of habitual residence governs her/his succession. The law of last habitual residence of an EU national, and the entitlements it may confer on her/his heirs, may therefore take precedence over the provisions of the Cypriot International Trust Law.*

One way out, to this complication is to allege, if justified, is that any judgement or decision as to heirship rights, is contrary to public policy and order of Cyprus relying on the provisions of Section 12C of The Cyprus International Trusts law, which allegation

might find support also in Article 40 of the EU Regulation No. 650/2012 which allows member states to refuse recognition of a judgement / decision that is manifestly contrary to its public policy.

Another complication which might be raised as to succession issues, is related to The Hague Trusts Convention article 15 which purports under certain circumstances to protect forced heirship rights contrary to the provision of a trust, once such a trust requested to be recognised in a country not recognising the notion of trust.

The relevant provision of article 15 do not affect Common Law countries including Cyprus which recognise the notion of trusts.

It is debatable whether Cyprus should have ratified this Convention in view of the favourable legislation as to Cyprus international trusts in place and the fact that trusts are playing important role in its domestic legislation already part of our legal system.

Such a ratification only confusion might create having in mind that the aim of the Convention being a conflict of law enactment, aims to justify the application and recognition of trusts in continental countries not having the trust notion in their domestic legislation).

Exclusive jurisdiction of Cypriot courts to the exclusion of foreign judgments on Cyprus international trusts issues

According to the Cyprus International Trusts Law, Section 12B, without prejudice to the provisions of Regulation (EC) 44/2001 of the Council of 22 December 2000 on International jurisdiction, which has been superseded on 10 January 2015 by Regulation (EC) 1215/2012 in relation to the recognition and enforcement of judgments on civil and commercial judgments, Cypriot courts have exclusive jurisdiction over a Cyprus international trust once it is provided in the trust deed that the applicable law of the trust is Cyprus Law 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 for the application of the Cyprus law on trusts.

In case of a foreign court judgment dealing with any issues of a Cyprus international trust to which Cypriot courts have exclusive jurisdiction, as indicated above, then such a foreign court judgment might not be enforceable in Cyprus by reason of being contrary to public policy and order.

(Our Comment: *This provision prohibiting the enforceability of foreign judgements, might be problematic in view of the provisions of EU Regulation No. 1215/2012 above specified.*

Accordingly, a judgement of a court of another EU member state, should be enforced in Cyprus even if it comes in direct contrast with the provisions of The Cyprus International Trusts Law, such as if the judgement asserts forced heirship rights of beneficiaries contrary to the trust provisions or is related to trust property such as land which is situated in another EU member state.

One way out, to this complication is to allege, if justified, that such judgement is contrary to public policy and order of Cyprus relying on the provisions of Section 12C of The Cyprus International Trusts law, which allegation might find support also in Article 45 1. (a) of the EU Regulation No. 1215/2012 which allows member states to refuse recognition of a judgement that is manifestly contrary to its public policy).

In the Cyprus case, **Arip xxx V xxx Trustee Services Ltd and others**⁴ the enforcement of an English judgement in relation to immovable property situated in England owned by a Cyprus International Trust was in issue. The court was faced with the argument that Art. 12B of the Cyprus International Trusts Law is applicable when a judgement is sought to be enforced even against a Cyprus International Trust in another member state which other state has exclusive jurisdiction over the subject matter.

⁴ Court Case No. 5/18, dated 24/10/2018 of the District Court of Larnaca.

In this case, the Judge decided that, as per art. 24 of the Regulation (EC) 1215/2012 in relation to the recognition and enforcement of judgments on civil and commercial judgments the courts of England have exclusive jurisdiction as the matter related to immovable property situated in England and the provisions of art. 12B could not apply. The EU Regulation prevailed over the provisions of the Cyprus International Trusts Law.

Express Superiority of the provisions of the Cyprus International Trusts Law over any other law in Cyprus

In the case where the Cyprus international trust is governed by Cypriot Law, then the provisions of the Cyprus International Trusts Law prevail and apply irrespectively of any contrary provisions in any other law in Cyprus.

The provisions of the Cyprus International Trusts Law are of superior power to any other law in Cyprus and are considered to be provisions of public policy and order.

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

The powers and authorizations granted by the Cyprus International Trusts 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 Cyprus International Trusts Law apply only if and to the extent that there is no contrary intention expressed in the terms of the trust deed and apply subject to its terms.

Possibility to grant extended powers to settlors – Reservation of powers

The Cyprus International Trusts Law specifically permits the settlor to reserve for him/herself certain powers and such reservation of rights, does not affect the validity of the Cyprus international trust or the execution of it in any way. Such powers may include any one of the following:

- (i) to revoke or amend the terms of the trust;

- (ii) to grant, distribute, pay or dispose of in any form, income or capital of the trust or give instructions as to the above;
- (iii) 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;
- (iv) to give binding instructions to the trustee in relation to the purchase, retention, sale, administration, financing, pledging or encumbering of the Trust Property;
- (v) to appoint or remove any trustee, enforcer of the trust, protector or beneficiary;
- (vi) to appoint or remove any investment manager or investment advisor;
- (vii) to change the applicable law which governs the Trust or the forum of administration of the Trust;

Sham Trusts - reservation of powers by the settlor

Such powers to be reserved by the settlor must be chosen with extreme caution in order to avoid any foreign jurisdiction from considering the trust a sham one and consequently void, despite that Cypriot courts will not recognize such a decision.

The alternative and preferable option, seems to be to appoint a protector and allocate these powers to the protector. Apart from the Cyprus International Trusts Law which clearly recognizes such powers to the settlor, The Hague Trusts Convention, provides also that, "*The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust*".

In effect, those countries which have ratified the convention may not consider the trust with reserved powers a sham one.

Such reserved powers in effect override the Common Law trust principles and allow settlors to exercise control over trust assets. If assets are within Cyprus, in the case of a Cyprus international trust there will not be an issue as to Cyprus legislation and the trust will not be considered a sham one.

The issues will appear if a foreign court will assume jurisdiction over such a trust for various reasons i.e. in case of execution proceedings over trust property. Relevant is the Cyprus case, ***Arip xxx V xxx Trustee Services Ltd and others*** discussed above.

There are also various cases of Commonwealth countries which assume jurisdiction over offshore international trusts where debtors tried to hide assets and the courts ordered the debtors to repatriate assets to the country where was the residency of the debtor and the seat of the court⁵.

If assets though are in a jurisdiction such as UK implementing the Common Law and Equity rules, such reservation of powers might render the trust a void one in the eyes of the UK forum as a pure sham.

In Common Law jurisdictions such reservation of powers is considered to be an invalid disposition of assets between the settlor and the trustee and in effect no valid trust has been created⁶.

Local Trusts - Reservation of powers by the settlor - Sham trusts

Even if for Cyprus international trusts such reservation of powers by the settlor are not rendering the trust a sham one as per Cyprus law, it is not the same case with Cyprus local trusts.

Cyprus Local trusts will follow as to this issue the Common Law trust principles and the rules of Equity and any serious reservation of powers to the settlor evidencing control over the trust assets might render the local trust a sham one and consequently void with serious consequences.

The aim of the settlor in such a case will not be achieved and the trust property will be the subject matter of attack by his/her creditors or subject to the forced heirship rules of succession.

⁵ *Federal Trade Commission (FTC) v Affordable Media& others (No. 98-16378 of the Ninth Circuit Court of Appeal Nevada – The Anderson case.*

⁶ *Rahman v Chase Bank Trust Company (CI) Ltd, and others (1991) JLR 103, Jersey*

An asset protection vehicle

Notwithstanding any contrary provisions of any laws in Cyprus or in any other country, and notwithstanding the fact that the Cyprus international trust is created voluntary and without consideration or is made for the benefit of the settlor and/or the spouse of the settlor or for any one of them, shall not be void or voidable and no claim can be filed in relation to assets which have been transferred to a Cyprus international trust, in the case of bankruptcy or liquidation of the assets of the settlor or in cases of institution of legal proceedings against the settlor by his creditors unless and to the extent that it is proven to the court that the trust was made with the intent to defraud persons who at the time when the payment or transfer of assets was made to the trust were creditors of the settlor.

The Cyprus International Trusts Law specifies that the burden of proof of such intent of the settlor, namely, to defraud the creditors rests with the creditors seeking to annul the transfer made to a Cyprus international trust.

As per the definition of the notion of "**creditor**" in the Cyprus International Trusts Law, a creditor means any legal or natural person or persons to whom the settlor owes a debt or other obligation at the time when the trust is created or a disposition of the property held on trust.

In effect, future creditors whose cause of action arose after the settlement of property on a Cyprus international trust, are barred from challenging the settlement as are not considered as creditors as per the provisions of this law.

Time barred provision

Such an action by a creditor or creditors, (the debt existed at the time or prior to the creation of the trust) must be instituted within two years from the date of the transfer or disposal of the assets to the Trust.

These provisions make it possible for Cyprus international trusts to be effectively used as asset protection vehicles against any creditors' attack or forced heirship claim provided that the trust was not created with the intention to defraud the creditors.

(Our Comment: *The beneficial asset protection legislation has its benefits when the assets are situated in Cyprus. If the assets are situated abroad and the foreign court has jurisdiction over the assets such protecting legislation might be ignored by the foreign court – relevant is also the case **Arip xxx V xxx Trustee Services Ltd and others** discussed above).*

Flexibility on investments and perpetual accumulation of income

Subject to the terms of the trust deed creating the Cyprus international trust, the trustee is permitted at any time to invest the whole or any part of the trust funds in any kind of investment as if he/she were the absolute owner of the trust property wherever the investment is situated and whether or not the capital has already been invested.

Any investment made by the trustee may be varied or retained in its original state as long as the Trustee exercises diligence and prudence which a reasonable person would be expected to exercise in making such an investment.

The income of a Cyprus international trust can be accumulated for the whole duration of the trust period.

The trustee of a Cyprus international trust has generally unlimited investment powers which must be exercised with the prudence and diligence of the reasonable person.

Flexibility on changing the proper law

The possibility to change the proper law of a Cyprus international trust is expressly provided in the Cyprus International Trusts Law with regards to both a change to the law of the Republic of Cyprus as well as to a change from the law of the Republic of Cyprus to any other jurisdiction. However, for such a change to be allowed under the Cyprus International Trusts Law, the following conditions must be met:

- (i) In the case of a change from the law of the Republic of Cyprus to a new proper law, the new proper law must recognize the validity of the trust and the respective interest of the beneficiaries;

- (ii) In the case of a change from a foreign law to the law of the Republic of Cyprus, such change is recognized by the previous proper law of the trust;

Variation of trusts - Flexibility in amending the trust deed

Variation by the terms of the trust deed

The provisions of the trust deed may be amended according to the specific express clauses of amendment provided in the trust deed itself. There is no need for any relevant court order to be issued in this respect, provided that the trust deed specifically allows such a step.

Variation by the Court

Irrespective of the above, the court has the power under the conditions specified in the Cyprus International Trusts Law, to approve any **arrangement** which varies or revokes the terms of the Cyprus international trust or enlarges or varies the powers of management or administration of the Trustees.

Provision is made in the Cyprus International Trusts Law for judicial approval of any **arrangement**, which varies or revokes the terms of the Cyprus international trust or enlarges or varies the powers of management or administration of the trustees under certain conditions.

The court shall not approve any proposed arrangement unless it is satisfied that such proposed arrangement appears to be for the benefit of the person applying for it without affecting the rights of other interested parties and or the beneficiaries.

Under section 54 of The Trustees Law

Where trustees manage and administer property and the trust instrument (or the law) does not contain a power to sell, lease, mortgage, surrender, release, purchase, invest, acquire, expend or carry out other transactions or dispositions that the court considers would be expedient, allows it to confer the appropriate power on the trustees.

This authorization will either be general or for a particular purpose or for a particular act and on such terms, provisions and conditions, as the court thinks fit to the benefit of the trust property or the beneficiaries.

Variation as per the rule in in Saunders v Vautier

In the absence of express powers in the trust deed, it may be possible to effect a variation of the trust by taking advantage of the rule in *Saunders v Vautier*⁷.

Collectively, all the beneficiaries, so long as they are all adults, *sui juris*, and between them entitled to the whole of the trust property, can bring the trust to an end and resettlement the property on any terms they wish.

Alternatively, the beneficiaries may collectively consent to any act by the trustees that has the effect of varying the terms of the trust without going through the process of dissolving and resettling the property.

Stamp duty

On establishing the trust there is stamp duty of only Euro 430 to be paid to the Commissioner of Stamp Duty.

Nil Taxation of income and gains of a Cyprus international trust

Income and gains of a Cyprus international trust derived or deemed to be derived from sources outside of Cyprus are not subject to any tax in Cyprus provided that the beneficiaries are not tax residents of Cyprus. The tax residency test for the imposition of tax is at the level of beneficiaries and not at the level of the trustees.

The income and gains of an international Trust derived or deemed to be derived from sources outside Cyprus are subject to taxation imposed in Cyprus only if the beneficiary is a tax resident of Cyprus.

If the beneficiary is not tax resident of Cyprus, then, only the income and gains of the international trust derived or deemed to be derived from sources in Cyprus are subject to taxation in Cyprus.

⁷ (1841) 4 Beav 115.

Non – Domicile status

Settlors and beneficiaries settling in Cyprus after the creation of the trust may opt to become tax residents of Cyprus but non – domicile and in such a way for a maximum 17 years period (to be calculate under certain methodology) they will not pay special defence tax in Cyprus on passive income such as, dividends, passive interest and rents received from abroad and distributed to them by the trustees of the trust.

On active interest there is income tax due and on rents there is liability to pay income tax, subject to tax credit relief in case of foreign rent, but no special defence tax is due as above indicated.

The source of income of the trust is taken into consideration to decide the tax treatment accordingly.

VI. BENEFICIAL USES OF TRUSTS

Beneficial tax and asset protection structures may be established using Cyprus international trusts both for business and family purposes.

A Cyprus International trust might serve, among others, as a vehicle:

- (i) To protect assets;
- (ii) To protect the beneficiaries;
- (iii) To retain control over assets and beneficiaries by setting out the terms of use in the trust deed – protect the property by misuse by the beneficiaries;
- (iv) To treat income and capital of a gift in different ways;
- (v) To save tax;
- (vi) To avoid the need to obtain a grant of probate – avoid the forced heirship rules in case they exist in a particular jurisdiction;
- (vii) For commercial uses;
- (viii) For family uses;
- (ix) For charitable uses;
- (x) To promote particular purposes;

Also, with proper tax planning and the use of Cyprus holding tax resident companies the extended number of Double Tax Treaties that Cyprus has signed may be utilized.

Tax Benefits

Any income transferred from foreign investments to a Cyprus Holding Company is subject to the Double Tax Treaty in force provisions between the two countries or EU directive if applicable or local laws of the foreign country of the investment;

In this respect:

- (i) There is no taxation on dividend income received by the Cyprus Holding Company, from foreign investments, subject to conditions;
- (ii) There is no withholding tax for the payment of dividends from the Cyprus Holding Company to the Cyprus international trust being its shareholder provided the beneficiary is not tax resident of Cyprus or is tax resident but non - domiciled;
- (iii) There is no taxation or withholding tax in case of distribution of profits from the Cyprus international trust to the non-tax resident beneficiaries or to the tax resident but non – domiciled beneficiary;
- (iv) There is no taxation or capital gains tax in Cyprus in case of the sale by the Cyprus Holding Company, being subsidiary of the trust, of shares or other titles held in a foreign or Cyprus company; If the shares sold are of a Cyprus company and that Cyprus company owns immovable property in Cyprus, then there is capital gain tax due;
- (v) There is no obligation on the Cyprus international trust to file and submit financial statements or tax returns. Accounting records though, must be prepared and the trustee must have clear picture of the assets, liabilities and profits of the trust;
- (xi) There is no inheritance or wealth tax in Cyprus.

VII. INFORMATION REQUIRED TO SET UP A CYPRUS INTERNATIONAL TRUST

In order to set up a Cyprus international trust the following Information is necessary:

- (i) Name of the Trust;
- (ii) Identification details for the settlor, beneficiaries, trustees, protector, if any, and trust enforcement supervisor, if any;
- (iii) Details of the trust property;
- (iv) The trust period, if any;
- (v) Powers reserved for the settlor, if any;
- (vi) Provision as to the way the trust deed is amended;
- (vii) Appointment and removal of trustees, protector and trust enforcement supervisor, if any;
- (viii) Indemnification of the trustees;
- (ix) Investment provisions and policy;
- (x) Letters of wishes – optional;
- (xi) Banking issues; and,
- (xii) Any other special provisions to be taken into account in drafting the trust deed.

C. CONCLUSION

The Cyprus international trust may be used effectively for family and business structures providing the means of effective planning. Its genius concept enables one person, the trustee, to control and manage property while vesting the beneficial interest of that property to another person. Its equitable character gives the weapon to the courts in appropriate cases to invoke the implementation of resulting or constructive trusts and administer justice there where Common Law or statutory law would have not been possible to do it.

The Cyprus International Trusts Law with the amendments of 2012 has elevated Cyprus international trusts legislation as one of the most favourable legislation in the world capable of giving unique protection and way out to the settlors, trustees and beneficiaries enabling them to structure their family or business relations in an effective way.

International trusts in Cyprus have begun their new era by providing a favourable trust regime ensuring that international investors, settlors and beneficiaries enjoy the highest possible degree of protection in a modern and attractive favourable environment.

Settlors, trustees and beneficiaries are highly protected as the provisions of the Cyprus International Trusts Law clearly provide that in case the trust is governed by Cypriot law any foreign jurisdiction laws can not affect their rights as identified in the trust deed subject to the EU Regulations and relevant EU law.

In addition, strict confidentiality is secured prohibiting any disclosure of information unless certain strict provisions are met.

From the tax aspect, if the beneficiaries are not tax residents of Cyprus and the generated income of the trust is acquired from sources outside Cyprus, then there is no taxation on the dividend income and gains of the trust. Considerable tax benefits are granted in the case of tax residents of non – domicile status.

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

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