

Creation of a Cyprus Trust

A Trust generally may be defined as an institution whereby the Settlor (the owner of something - usually a proprietary asset) entrusts property or delegates it in the custody of a Trustee for use or for management or for safe custody. The title of the trust property is transferred and registered in the name of the Trustee, who becomes the legal owner for the purpose of its management for the benefit of the Beneficiary(ies). In such a case, the Trustee owes fiduciary duties to the Beneficiary(ies).

If a Settlor wishes to have the power to replace the Trustee with another Trustee this can be retained by him or conferred on a person, known as the Protector, who is often given a watching role over the Trustee and in whom some powers can be vested for the Beneficiaries' protection. The conditions governing the relationship are set out in a document known as the "Trust Deed".

It is not easy to construct a comprehensive definition of what a trust is and this is because of the variety of trusts that can exist and the variety of ways that can be created.

Over the last decade, Cyprus has become one of the most sought after jurisdictions for the establishment of both Cyprus trusts and Cyprus International Trusts. Whether a Cyprus Trust or a Cyprus International Trust is created, Cyprus offers the opportunity to establish a trust in a jurisdiction where the combination of legal protection of the rights of the settlor and the beneficiaries, together with the beneficial tax regime, is second to none.

THE LAW

The main Trust Law of Cyprus, enacted in 1955 (Trustees Law, Cap 193), is based on the English Trustee Act 1925 as well as on doctrines of equity and case law of England.

The concept of trust involves the following parties:

- **Settlor:** the person who creates the trust.
- **Trustee:** the person who holds the trust – either a person or legal entity.
- **Beneficiary:** the person who will acquire the benefit of interest in the relevant property.

The choice of the Trustee is vital. Benefits that arise when selecting a Corporate Trustee:

- **Immortality** may be achieved whereas this is not possible when selecting an individual.
- A company can be the sole trustee; however, **responsibility may be shared by a group of people** through the directors.
- The corporate trustee has the advantage of **limited liability**.

When a trust is created, under Cyprus Law it carries the following characteristics:

- It has a life of its own,
- It is independent of the person who created the trust, namely the settlor,
- Its life continues regardless of the death of the settlor, beneficiaries or trustee.

Types of Trusts established in Cyprus

The main types of trusts that can be established in Cyprus are the following:

- The Cyprus “local” trust.
- The Cyprus “international” trust.

A local trust is a trust of which either the Settlor or one of the beneficiaries are residents of Cyprus, whereas a Cyprus international trust is a trust where the Settlor and the Beneficiary are not residents of Cyprus in the calendar year which immediately precedes the year in which the trust is created.

Classification of Trusts

There are essentially 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.

Three certainties must be cautiously appraised and met so that a trust is valid:

- **The Certainty of Intention:** this refers to the intention of the settlor who is to transfer the property to create a trust. This may be expressed either orally or in writing. Such intention is usually expressed in writing through a trust creating instrument/deed.
- **The Certainty of Subject Matter:** there must be certainty as to both an identifiable property being subject of the trust as well as the portion of the property or ensuing rights that the beneficiaries will receive. Generalities or ambiguity to the description of the subject matter of the trust may lead to the invalidity of the trust.
- **The Certainty of Objects:** this certainty refers to the fact that the trustee should know who the beneficiaries are and they should be identifiable. The beneficiaries cannot be a large or vaguely identified group that the settlor would not be in a position to identify.

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.

Fixed trusts are those trusts where the share or interest of the beneficiaries in the trust property is specified by the settlor and cannot alter. 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. This is the perhaps the most sophisticated and most popular type of trust. Nowadays most Cypriot trusts tend to be discretionary trusts.

In a discretionary trust the trustees have discretion about how to use the trust's income and they may also have discretion about how to distribute the trust's capital with the result that no beneficiary can call on the trustees to distribute income and capital.

The trustees may also be able to "accumulate" income (that is add it to the capital of the trust) for the whole period of the trust's duration unless the trust instrument specifies that there is to be a shorter accumulation period.

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.

WHY SET UP A TRUST?

- ✓ **Protection of Assets**
- ✓ **Settling of inheritance/succession matters**
- ✓ **Tax Planning**

Tax imposition (if any) depends on the tax status of the Beneficiary; i.e. if the Beneficiary of such trust is a resident of Cyprus then the income or profits of such trust, which arise in and out of Cyprus, will be taxed according to the laws prevailing in Cyprus. If the Beneficiary is not a tax resident of Cyprus, then solely the income or profits of such trust that arise within Cyprus are taxed according to the tax laws of Cyprus.

- ✓ **Confidentiality protection**

Confidentiality and secrecy are preserved under the Law which prohibits the disclosure to unrelated third parties of any information relating to the identity of the Settlor, the Beneficiaries, the Trustees and the property trust unless the above are ordered by the courts of Cyprus (where it is apparent that such disclosure is crucial to the outcome of the court proceedings).

- ✓ **Promotion of a charitable purpose as prescribed by Law**
- ✓ **Management of family property for the benefit of family members, including minors and incapacitated persons**
- ✓ **Avoid family disputes**
- ✓ **Commercial purposes**

The trust property may include all kinds of assets and property (movable & immovable) anywhere in the world including Cyprus.

REGISTRATION PROCESS

As per the Law Regulating Companies Providing Administrative Services and Related Matters of 2012, as amended, a Cyprus resident Trustee of a trust governed by Cyprus Law is obliged to notify the relevant competent authority (Cyprus Securities and Exchange Commission, the Cyprus Bar Association or the Cyprus Association of Certified Accountants) within 15 days from the creation of such Trust with the below information:

- ✓ The name of the trust
- ✓ The name and full address of the Trustee(s) at all relevant times
- ✓ The date of establishment of the trust
- ✓ the date of any change in the law governing the trust to or from Cyprus Law and
- ✓ the date of termination of the trust.

Any amendments that follow in relation to the trust must also be notified to the competent authority, not later than 15 days of such amendment.

For the purposes of ensuring that information contained in the **Cyprus Trust Registry** kept with the above mentioned competent authorities remains confidential, the Law provides that information contained in the Trust Registries are not available to the public and only the three above mentioned competent authorities may access such information.

Additionally, and according to the Law on the Prevention and Suppression of Money Laundering and Terrorist Financing of 2007, as amended, the Trustee is bound to obtain and hold adequate, accurate and up-to-date information of beneficial ownership regarding the trust disclose beneficial interest information in the event that the management of the trust is carried out in Cyprus, which shall include the identity of:

- The settlor
- The trustee
- The protector
- The beneficiary(ies)
- Any other natural person exercising effective control over the trust.

N. Pirilides & Associates LLC is in a position to offer the following related services to clients wishing to establish a trust in Cyprus:

- Formation of Trusts
- Support in finding a suitable trust structure to meet client's requirements and wishes
- Drafting of relevant trust deeds/instruments/agreements
- Trust administration and management, compliance with all legal requirements
- Provision of trustee and/or protector services.

You may contact our Firm for assistance in relation to the establishment and administration of trusts and our team will be happy to assist you with anything you may require.

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