Reform of the Cyprus International Trusts Law of 1992

On March 08, 2012, the House of Representatives enacted the International Trusts (Amending) Law of 2012, L.20(I)/2012 (the “Amendments”) reforming the International Trusts Law of 1992, L.69(I)/1992 (the “Law”). The Amendments are effective as of March 23, 2012. It is expected that these Amendments will enhance the position of Cyprus as an international business centre and restore Cyprus as an attractive location for the establishment of trusts. For the purposes of this summary the term "international trust" refers to a trust falling within the definition of the Law. We set out herewith a summary of the most important changes effected by the Amendments:

Residency
1) Prior to the Amendments, there were three requirements to establish an international trust, as follows:
   (a) the settlor and beneficiaries (with the exception of charities) were not permanent residents of Cyprus;
   (b) at least one of the trustees was a permanent resident of Cyprus; and
   (c) the trust property did not include any immovable property situated in Cyprus.

2) The Amendments abolish criterion (1)(c) above and provide that the settlor and the beneficiaries may not be a Cyprus tax resident in the year preceding the year of creation of the trust.

Validity of international trusts
1. Following the Amendments, any issues pertaining to, amongst other things, the validity, interpretation, amendment or administration of an international trust or a disposition to an international trust will be determined by the laws of Cyprus without regard to the law of any other jurisdiction.
2. It is noted that any inheritance or succession statutes in Cyprus or overseas will not affect any transfer or disposition of property or similarly affect the validity of an international trust.

3. On related point, in respect to paragraph (1) above, the Amendments provide that no disposition to an international trust may be challenged on the basis that it contravenes the laws of another jurisdiction such as, amongst other, any forced-heirship laws, mandatory provisions of family law or laws prohibiting or not recognising trusts.

4. Prior to the Amendments there were no express provisions regulating the law governing the duties and powers of trustees. Following the Amendments the trustees' fiduciary powers and duties of trustees and the powers and duties of any protectors of the trusts are governed exclusively by Cyprus law.

**Settlor's reserved powers**

1. Prior to the Amendments the consensus view was that it was doubtful if a settlor could have reserved any powers to himself and at any event, to do so was risky.

2. Following the Amendments, a settlor is enabled to, *inter alia*, reserve powers to himself, retain a beneficial interest in trust fund, or to act as the protector of the international trust without impugning the validity of the trust.

3. The Amendments explicitly provide that the reservation of any powers shall not be construed as “intent to defraud” the Settlor’s creditors.

**Duration Period**

1. Prior to the Amendments, an international trust could have lasted for a maximum of 100 years from the date on which it came into existence.

2. Following the Amendments, an international trust can exist in perpetuity.

3. The Amendments retain the provision that charitable trusts and non-charitable purpose trusts can exist in perpetuity.

4. In addition, the arcane and convoluted ‘rule against perpetuities’ and ‘rule of remoteness of vesting’ are abolished.
Augmentation of trustees’ investment powers
1. Prior to the Amendments, a trustee enjoyed broad investment powers and could therefore invest the trust funds in any kind of investment wherever the investment was situated. The trustee was expected to exercise the diligence and the prudence which a reasonable person was expected to exercise when he makes investments.

2. Following the Amendments, the trustee’s investment powers have been enlarged so that he has the same investment powers as those of an absolute owner and the trustees are explicitly permitted to invest in movable and immovable property (which prior to the Amendments was expressly prohibited) in Cyprus and abroad, including shares in Cyprus companies.

Taxation
1. Following the Amendments,
   (a) in case of a beneficiary who is a Cyprus tax-resident, the income and profits of an international trust derived or deemed to derive from sources within or outside Cyprus are subject to all taxes that are applicable in Cyprus;
   (b) in case of a beneficiary who is not a Cyprus tax-resident, only the income and profits of an international trust derived or deemed to derive from sources within Cyprus are subject to all taxes that are applicable in Cyprus, noting that dividends or interest received from Cyprus sources are not taxable.

2. It is noted that the Amendments do not worsen the position enjoyed by a non-Cyprus resident beneficiary of an international trust that had existed prior to the Amendments.

Retroactive Effect
1. The Amendments apply to all international trusts irrespective of the date of their creation and do not prejudice the validity, of any prior valid disposition or transfer.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.
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