

An analysis of the Amendment to the CIT Law 2012

March 2012

Introduction

The eagerly awaited Amendment to the Cyprus International Trusts Law (CIT) 2012 was finally passed by the House of Representatives on 8 March 2012, placing the island firmly on the same playing field with the world's most attractive trust jurisdictions.

The changes take into account the realities of the Cyprus economy today and are in compliance with EU law and directives. The CIT law is now considered one of the best, if not the best, in Europe.

The key changes introduced by the amending law are summarized below.

Effect on pre-existing trusts

The amending law applies to all CITs irrespective of their time of incorporation.

Revised definition of a CIT and residency issues

In line with the provisions of the 1992 law, a CIT could only be established by a non-Cyprus resident settlor for the benefit of non-Cyprus resident beneficiaries, with the exception of charitable institutions. Clearly, the former piece of legislation sought to limit its scope of application to non-residents of Cyprus, as a means to avert tax avoidance by Cyprus residents. However, uncertainty existed as to whether a settlor and/or beneficiaries could relocate to Cyprus at any time in the future, following the establishment of a CIT.

Clarity on this matter is provided in the amending law. In particular, by virtue of the provisions of the amending law, the settlor and the beneficiaries (other than charitable institutions), must not be residents of Cyprus during the calendar year preceding the year of creation of the trust, but may take up residency in Cyprus at any time following its creation. It is noted that the term 'beneficiaries' now also includes unborn beneficiaries.

Investing in movable and immovable property in Cyprus

The amending law expressly enables trustees to invest in movable and immovable property in Cyprus and abroad, including shares in Cyprus companies. In line with the aforementioned, the abolition of the prohibition on ownership of property in Cyprus, eliminates obstacles in cases of the settlor and/or the beneficiaries seeking residency in Cyprus after the creation of a CIT.

Validity of an international trust and exclusion of foreign law

Moreover, a new provision is introduced, expressly providing that any issues arising in relation to the CIT including, but not limited to, issues in connection with the validity, interpretation or administration of, or disposition to, a CIT and the powers and duties of the trustees, protectors or enforcers shall be determined by the laws of Cyprus without reference to the law of any other jurisdiction. Furthermore, the laws of Cyprus or the law of any other jurisdiction in relation to inheritance or succession shall not affect in any way the validity of the trust or any transfers or

dispositions thereto. This exclusive jurisdiction of Cyprus laws over CITs successfully addresses asset protection concerns.

Reserved powers of the Settlor

A new section is introduced by the amending law, enabling the settlor of a trust to reserve powers to himself or herself, to retain rights over, or interest in, the trust property and to act as a protector or enforcer of the trust without these affecting the validity of the trust.

- Such reserved powers give settlors great flexibility and include:
- the right to revoke, vary or amend the terms of the trust
- the right to apply trust income or capital or to give directions to this effect
- the right to act as a director or officer or to give binding directions for the appointment or removal of directors or officers of a company belonging to a trust
- the right to give binding directions to the Trustee in connection with the trust property
- the right to appoint or remove any trustee, enforcer, protector or beneficiary, investment manager or investment consultant
- the right to change the governing law or forum of administration of the trust
- the right to limit the powers of the trustees by stipulating that these are exercisable only with the consent of the settlor or any other person so specifies in the terms of the trust

Duration of a CIT

The 1992 law provided for a maximum duration of a CIT, being 100 years from the date of creation of the trust. An exemption was available for charitable and purpose trusts which were able to continue in force in perpetuity.

By virtue of the amended law, trusts that are created from the effective date of the amendment onwards, and subject to the terms of the trust, shall not be subject to a maximum duration and therefore are valid indefinitely.

Authorised investments - Extension of trustees' powers & responsibilities

Wider trustee investment powers are introduced in the amending law. While the 1992 law gave wide powers of investment to the trustees to be exercised with the diligence and the prudence which a reasonable person would be expected to exercise when he makes an investment, the amending law extends the trustee powers further in that it enables him or her to act as the absolute owner of the trust property in exercising the said powers.

The trustee is also now expressly obligated to comply with the anti-money laundering laws of Cyprus.

Choice of law clause and public policy

CITs with a choice of law clause in favour of Cyprus law are by virtue of the provisions of the amending law subject to the provisions of the International Trusts Law notwithstanding any other Cyprus Law provisions on conflict of law, and are as such protected from unsubstantiated foreign legal claims as a 'matter of public order'.

Taxation

Taxation of CITs continues to be most favourable. The amending law expressly provides that income and gains of an international trust sourced in or outside Cyprus shall be taxed in Cyprus provided that the beneficiary is a Cyprus tax resident. Furthermore, a non-Cyprus tax resident beneficiary shall only be subject to Cyprus tax on Cyprus-sourced income.

In line with the above, a CIT with non-Cyprus resident beneficiaries and income from non-Cyprus sources continues to be exempt from Cyprus tax.

Other changes:

- Extended list of definitions enhancing clarity
- A revised, wider and extended list of charitable purposes was introduced
- Introduction of specific provisions on the powers of the trustee to apply to Court for directions in connection with the manner he should act in relation to matters connected with a CIT
- Introduction of more concrete rules on the choice of law, jurisdiction and trusts that are governed by foreign laws

Conclusion

The Amendment to the Cyprus International Trusts Law (CIT) 2012 is perfectly aligned with the best interests of Cyprus and foreign investors and will help fortify and further develop the island's reputation as an international business centre.

NOTES:

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained. Our company will be glad to assist you in this respect. Please do not hesitate to contact us.