THE MULTI FAMILY OFFICE

INTERNATIONAL TRUSTS

In July 1992, Cyprus enacted the International Trusts Law 69(I)/92 (the "Law"). The Law regulates the establishment and administration of international trusts and is designed to complete the spectrum of services the island offers as a financial center. It should be noted that since Cyprus is a common law jurisdiction the concept of trusts has always been part of its law. Thus, the object of the Law has been to modernize and update the existing legal framework.

1. **The most important provisions of the Law are**:

(a) **Definitions:** Section 2 of the Law defines the conditions necessary for a trust to be considered international and thus come under the ambit of the Law. In that regard it is necessary that the settlor and beneficiaries are not permanent residents of Cyprus, at least one of the trustees is a permanent resident of Cyprus and the trust property does not include any immovable property situated in Cyprus. The distinguishing element of this definition, which is also the unique feature of the Law compared to other jurisdictions, is that according to the proviso in section 2, a trust shall not fail to qualify as an international trust by reason only that either the settlor or the trustee or any one or more of the beneficiaries is a Cyprus company. This facility, as explained hereunder, can offer unique opportunities to a wide range of investors.

(b) **Asset Protection:** Sections 3(2) and 3(3) provide that no trust shall be void unless and to the extent that it is proven in Court by a creditor that at the time of the transfer to the trust this was done with intent to defraud,

THE MULTI FAMILY OFFICE

the burden of proof lying with the creditor. No action may be brought against the trustee after two years from the date of the transfer.

(c) **Perpetuities and Accumulation:** Section 5 provides that the perpetuity period for non charitable trusts is one hundred years, while, according to section 6, income may accumulate for any period within the period of the trust.

(d) **Applicable Law:** Section 9 allows for the change of the law of the trust to and from the law of the Republic of Cyprus, if such change is authorized by the terms of the trust itself. This could be of importance where a change of circumstances may render such a transfer necessary or desirable for tax planning or other reasons.

(e) **Confidentiality:** Questions of confidentiality are dealt with by section 11 which prohibits any of the trustees or any other person including government officials and officers of the Central Bank of Cyprus from disclosing any information about the trust. Sections 11(2) and 11(3) provide that a Court may by order allow disclosure of information where such disclosure is of paramount importance to the outcome of the particular civil or criminal proceedings.

(f) **Taxation:** Section 12(1) provides that the income and gains of a trust derived or deemed to derive outside Cyprus shall be exempt of all Cyprus taxes and that there shall be no estate duty in respect of assets belonging to the trust. All income and profits derived from trust property outside the Republic are exempt of all taxation while the trust property is not subject to estate duty or other inheritance tax. It should be noted that the wording of the section is such that the trust is liable to taxation in Cyprus (though its foreign income is taxed at zero rate) thus preserving the possibility of arguing that it is a resident for the purpose of the various tax treaties.

2. Cases where the trustee is a Cyprus entity

It appears that when the trustee is a Cyprus entity, the Law opens many interesting possibilities, which can arise in two totally different situations. First, where one establishes a Cyprus company for the purpose of acting as trustee for one particular trust and secondly, where international financial companies (such as banks etc.) establish a company in Cyprus for the purpose of offering trustee services to third parties.

In the former case of trustee companies established for one particular trust one can think of two apparent advantageous uses.

(a) Avoiding the 12,5% income tax imposed on Cyprus companies:

If an investor forms a Cyprus company that will hold an asset beneficially the income of the company is liable to 12,5% income tax in Cyprus. The investor can instead now form a trustee company that will hold the asset as trustee for the investor. The trustee company may either belong to the investor or his immediate environment or to his foreign professional consultant. Thus, the income derived from the asset, being trust income, will be tax exempt.

(b) Taking advantage of double tax treaty network:

Further it is possible to take advantage of the wide double tax treaty network of Cyprus. This can also be achieved where the intended property is put into a Cyprus company and the trust owns, instead of the property itself, the shares of the company.

International Trusts

THE MULTI FAMILY OFFICE

ABOUT BKMS

With over a decade worth of experience and a prominent network of international clients, BKMS has established a reputation that speaks for itself. BKMS is covering a broad spectrum of industries, taking into account the required accounting treatment and tax implications as well as the challenging international regulatory framework. Client Trust and loyalty are the very fundament of every commitment undertaken by BKMS. Adherence to a strict policy of professionalism therefore results in continuously successful developments. BKMS is regulated by Cyprus Securities and Exchange Commission Registration No 96/196.

MULTI FAMILY OFFICE SERVICES

Administrative Services

Tax Planning

Wealth Planning

Corporate Consulting

Legal Services

BKMS Limited

201 Strovolos Avenue

Off. 201-202, 2nd Floor

2049 Nicosia, Cyprus

info@bkmsgroup.com

Tel. +357 – 22 265 360

Fax. +357 – 22 265 361