

Trust formation in Cyprus is governed by the Cyprus International Trusts Law 1992 which complements the Trustees Law Chapter 193 of 1955 which in its turn was based on the English Trustees Act of 1925.

A Cyprus International Trust in simple terms can be defined as the obligation which is placed upon a Trustee by the Settlor to manage the trust property for the benefit of the Beneficiary in accordance with the trust instrument.

Who can create a Cyprus International Trust and are there any restrictions?

A Cyprus International Trust can be created by anyone provided of course that the Settlor is of sound mind and of right age. The restrictions imposed by the International Trusts Law of 1992 to 2012 focus on the residency status of the Settlor, the Trustee and the Beneficiary are provided below:

The Settlor

The Settlor is the person who sets the Cyprus International Trust and can be either a natural or legal person but must not be resident in Cyprus during the calendar year immediately preceding the creation of the trust;

The Trustee

The Trustee or at least one of the Trustees must be resident in Cyprus for the whole duration of the Cyprus International Trust. This means that if the Settlor wants to appoint a Trustee who has his resident outside of Cyprus then he must appoint a second trustee. In this case our firm can provide such service for the Settlor;

The Beneficiary

The Beneficiary or Beneficiaries must not be resident in Cyprus during the calendar year immediately preceding the creation of the trust and that applies equally whether the beneficiary is a natural or legal person.

What are the formal requirements to create a Cyprus International Trust?

The formalities that need to be met for the creation of a Cyprus International Trust are:

- a) Comply with the residency requirements of the International Trusts law;
- b) Make sure that the trust instrument satisfied the 3 certainties requirement;
- c) Provide the information related to the Trustees to the relevant competent authority as per the September amendment to the law;

- d) if the Cyprus International Trust is created by a will, the formal requirements indicated in the relevant law on wills must be complied with;
- e) Payment of stamp duty of €430;

As stated above order for a Cyprus International Trust to be valid we need to have the following 3 certainties present:

- a) **Certainty of Intention** = we must be able to demonstrate the Settlor's express intention to create the trust;
- b) **Certainty of Subject Matter** = the assets which will form the trust property must be readily identifiable and tangible;
- c) **Certainty of Objects** = the identity of the beneficiaries must be clearly stated and sufficiently defined in cases where this involves as large group of people.

Types of Cyprus International Trusts

Express private trusts

The most common form of a Trust which is created by the Settlor expressly either by using a deed, in writing, by will and in some exceptional circumstances an oral statement could be seen as sufficient. The 3 certainties must be present at all times.

Charitable Trusts

A Cyprus International Trust shall be deemed to be charitable if the 3 certainties are present and if it falls under the provisions of s.7 of The International Trusts Law of 1992 and 2012 and the Trust must have as its main purpose the achievement of one or more of the following:

- a) the prevention or relief of poverty;
- b) the advancement of education;
- c) the advancement of religion;
- d) the advancement of health or the saving of lives;
- e) the advancement of citizenship or community development;
- f) the advancement of the arts, culture, heritage or science;
- g) the advancement of amateur sport;
- h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- i) the advancement of environmental protection or improvement;
- j) the relief of those in need by reason of youth, age, ill health, disability, financial hardship or other disadvantage;
- k) the advancement of animal welfare and protection of animals;
- l) any other purposes beneficial to the public in general or which may reasonably be considered to be incidental to any purposes falling within any of the paragraphs above.

Fixed Trusts

Fixed Trusts provide that the Beneficiaries shall only be entitled to the specified trust property which is indicated by the Settlor upon the creation of the Trust.

Discretionary Trusts

With discretionary Trusts the Settlor has vested to the Trustees a discretion in regards to the sum each Beneficiary shall be entitled from the trust property.

Legal benefits of creating a Cyprus International Trust

- a) A Cyprus International Trust can be used as an asset protection vehicle as it is immune from forced heirship and claw back rules in other jurisdictions where the assets are located;
- b) A Cyprus International Trust does not become void even where the Settlor becomes insolvent or bankrupt;
- c) A Cyprus International Trust which was set up after 2012 has no limit on the period over which it is valid and enforceable;
- d) When a creditor contemplates that the Settlor used the Cyprus International Trust to defraud him the burden of proof is upon the creditor to prove such a sham within 2 years of creation of the Cyprus International Trust. After the 2 year period the creditor will be barred from bringing an action against the trustees.

Taxation of a Cyprus International Trust

Income

- a) If the Beneficiary is not resident in Cyprus and receives income from outside of Cyprus this income will not be subject to tax;
- b) If the Beneficiary is resident in Cyprus and receives income from Cyprus this income is subject to tax;
- c) If the Beneficiary is resident in Cyprus and receives income from outside of Cyprus and also from Cyprus then this income will be subject to tax;
- d) A Cyprus International Trust does not pay any tax on income received from outside of Cyprus whereas a Cyprus Company pays income tax on its worldwide income;
- e) A Cyprus International Trust does not pay any tax on the interest received provided that the beneficiaries are not resident in Cyprus;
- f) Cyprus International Trusts are not affected by the nonexistence of a double taxation treaty.

Dividends

Dividends which are received by the Cyprus International Trust from a Cyprus company are not subject to tax.

Payments to beneficiaries

There is no withholding tax on payments to beneficiaries provided that they are not resident in Cyprus.

Capital Gains

Any gains from asset disposal, other than immovable property situated in Cyprus, made by the Cyprus International Trust are not subject to capital gains tax in Cyprus.

Estate Duty

No estate duty is payable by a Cyprus International Trust that was formed for the purposes of estate duty planning.

Amendments after 2013 affecting Cyprus International Trusts

As part of maintaining an attractive trust jurisdiction and at the same time remaining compliant with European Law and anti-money laundering laws and regulations the Cyprus Parliament has passed laws amending the Law Regulating Companies Providing Administrative Services and Related Matters of 2012 and the International Trusts Law of 1992 to 2012.

Trust Registry

The main amendment which clients need to be aware of is the creation of a Trust Registries which will be maintained by 3 Cyprus regulatory authorities; namely the Cyprus Securities and Exchange Commission, the Cyprus Bar Association and the Cyprus Association of Certified Accountants. For the purposes of ensuring that such information contained in the Trust Registries remains confidential, only the 3 abovementioned authorities will have access to such information and will not be made publicly available in under any circumstance.

What information must be provided to the Trust Registry

1. The name of the Cyprus International Trust;
2. The name and the full address of the Trustee or Trustees of the Cyprus International Trust at all relevant times;
3. The date when the Cyprus International Trust was established;
4. The date of any change in the governing law to the Cyprus International Trust occurred;
5. The date of termination of the Cyprus International Trust.

What details need to be verified?

As per art.7 of the Law Regulating Companies Providing Administrative Services and Related Matters of 2012 Persons providing services of management and administration to trusts are obliged to verify the details and the true identity of the beneficial owners of trusts, including the following categories:

1. Trustees;
2. Settlers;
3. Beneficiaries or class of beneficiaries;
4. Protectors, if any;
5. Investment consultants, accountants, tax consultants, if any;
6. Activities of the trust;
7. Any other person that exercises the effective control on the trust.

As the Cyprus International Trust must have at least one (1) Cyprus-resident Trustee, it will be the responsibility of that Trustee to notify the relevant competent authority fifteen (15) days after the creation of the Cyprus International Trust or in case where Cyprus law becomes the governing law of the Trust. Any amendment that follows must also be notified to the competent authority not later than fifteen (15) days of such amendment.

Will these amendments affect existing Cyprus International Trusts?

These amendments will be retroactive, meaning that every Cyprus International Trust created in Cyprus (provided that it has not been terminated) will have to comply with the amendments to the Law Regulating Companies Providing Administrative Services and Related Matters of 2012 and the requirement to provide the details of the existing International Trust by the 9th of March 2014.

How long will the information be kept on the Trust Register after the termination of a Cyprus International Trust?

The information will remain in the Trust Register for a term not exceeding 5 years after the termination of the Cyprus International Trust.

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.

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