# The Private Wealth & Private Client Review

Fifth Edition

Editor
John Riches

Law Business Research

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John Riches

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# EDITOR'S PREFACE

The first six months of 2016 have been characterised by turbulence for the world in general, and particularly for those holding significant private wealth. The key development of 2016 to date has been the publication of the 'Panama Papers'. The response to the publication from governments and the Organisation for Economic Co-operation and Development (OECD) has reinforced trends seen in prior years towards greater transparency and regulation in the domain of cross-border holding structures and in the context of beneficial ownership information.

### i Panama Papers

Many have pointed to the irony surrounding the approach taken by the International Consortium of Investigative Journalists (ICIJ) in Washington in the context of its publication of the Panama Papers. The ICIJ's website sets out an elaborate procedure for whistle-blowers to provide information to them on a 'confidential' basis and the organisation has been resolute in its assurances that it will keep its sources confidential. So while the ICIJ argues for full transparency of information about the holding of private wealth, it does not consider that this standard should apply to those who provide information about wealthy families, even if the information is secured by unlawful means. Clearly, the Panama Papers have highlighted some issues concerned with offshore structures being used to provide a veil of secrecy to allow unlawful activity to go undetected and there is no sympathy for those whose unlawful acts have been exposed. Of deeper concern, however, is those who have sought to defend their privacy and yet have been accused of wrongdoing on a completely false basis – the case of Emma Watson who placed her home in the name of an offshore nominee to protect herself against stalkers serves to illustrate this trend. What has been striking from a UK perspective is the extent to which journalists from respected media organisations comment on issues relating to offshore structuring using language that is sensationalist in tone and frequently wildly inaccurate. The apparent furore over the former prime minster David Cameron's holding in an entirely conventional offshore fund structure established by his late father for third-party investors was reported by the BBC as an 'offshore fund trust'. The impression one gained from this reporting was that the journalist concerned was merely including as many words in the article that he felt had negative connotations to achieve maximum effect, regardless of their technical inaccuracy.

While the Tax Justice Network asserts in a 28 June 2016 report that 'trusts become the preferred choice by tax dodgers, corrupt officials or money launderers' to avoid transparency, there is precious little evidence of the large-scale use of trusts that has been unearthed by recent revelations such as the Panama Papers. A perspective that will not be published in any newspaper in the context of the Panama Papers is to explain that the vast majority of offshore trusts are used by tax-compliant families for legitimate wealth structuring and intergenerational succession planning. However, we should not assume that this will silence those who oppose trusts as a matter of principle. The party line of the Tax Justice Network and others is that the reasons trusts escape frequent references in the context of scandals is because they are so effective in hiding wrongdoers and so are very difficult to detect. They clearly have no idea about the depth of scrutiny a family is subject to in terms of anti-money laundering or know-your-client procedures to establish a trust in a well-regulated offshore finance centre.

I do not suggest that we can afford to be complacent about the scope for misuse of offshore vehicles in any way, but it is essential we take every opportunity to explain to policymakers the entirely legitimate purposes for which the overwhelming majority of families employ trusts and similar structures as part of their succession planning and wealth structuring.

### ii The Common Reporting Standard (CRS) update

We are now fully in the era of the CRS, which became effective on 1 January 2016. Certain aspects of the CRS are causing a degree of confusion in terms of implementation, especially in the trust arena. Many of the difficulties here stem from the basic conceptual framework, copied over from the Foreign Account Tax Compliance Act (FATCA), which treats a trust fund as a 'financial account'. The most notable 'glitch' in this framework is in identifying those persons connected with trusts who need to be reported on. When trustees self-report as reporting financial institutions, the concept of an 'equity interest' does not name protectors. Alternatively, if one turns to the parallel list for trusts that are passive non-financial entities, protectors are expressly named. The OECD's own position set out in a recent FAQ is that the protector should always be named, but the formal legal basis included in the CRS model treaty is doubtful. It is to be hoped that in the second half of 2016 it will be possible to obtain clearer guidance on many areas of ambiguity so that all parties are fully prepared for the first wave of CRS-related disclosure for the 2016 financial year, which will be required before May 2017.

One silver lining to this confusion and uncertainty on protectors is a renewed focus on the choice of an appropriate person to serve in a protector role. In some cases, families are electing to formalise governance processes around fiduciary holding structures and introduce independent professional protectors in place of close relatives or family friends whose understanding of their duties may have been somewhat limited.

There already appears to be a two-speed world in the context of CRS with an enthusiastic group of early adopters who have signed the Multilateral Competent Authority Agreement so as to be able to exchange information with as many nations as possible, while a more reticent group of nations plan to adopt CRS on a bilateral treaty-by-treaty basis. The EU and Crown Dependencies and Overseas Territories are in the first group, while notably the Bahamas, Hong Kong, Singapore and Switzerland are in the second.

There is an emerging trend of consolidation of offshore structures into single jurisdictions to reduce complexity and multiple service provider compliance. It will be interesting to see which jurisdictions win out in this time of transition and, in particular, whether those international finance centres such as Jersey and Cayman that have placed themselves in the early adopter group will benefit from this stance. It is becoming apparent that many clients are keen to demonstrate their commitment to working in a transparent environment to forestall the type of ill-informed criticism unleashed in the wake of the Panama Papers.

### iii Exchange of Beneficial Ownership Information (EBOI)

EBOI is the latest initiative being promoted by the G5 in Europe (the UK, Germany, France, Spain and Italy) and was a direct response to the Panama Papers' publication. EBOI builds on the same concepts that underpin the CRS and FATCA. The aim is, in parallel to the tax-related disclosure generated by FATCA and the CRS, to require the annual provision of beneficial ownership information on companies, trusts, foundations and similar legal arrangements or entities. The starting point is to require all jurisdictions that participate to maintain an accurate register in the hands of competent authorities to identify the beneficial owners of all such legal entities and arrangements.

The OECD is due to report back on the framework for potential implementation of EBOI in October 2016. What is increasingly apparent from the initial proposals is that their scope could well be significantly wider than the CRS framework. Where EBOI could widen the disclosure of information further is in requiring every single entity within a holding structure to have its own beneficial ownership register. If one takes, for example, the disclosure that relates to the holding structure ultimately held through a trust, the current rules under the CRS enable trustees that are themselves reporting financial institutions to take overall responsibility for reporting on the entire structure. If all underlying entities held within the trust are themselves reporting financial institutions or active non-financial entities (NFEs), only a single report is provided in relation to the trust as a whole. However, under EBOI, it may well be necessary to make multiple disclosures on all holding entities in a trust even though they have a common set of beneficial owners. The same rules could also apply for multiple layer holding structures ultimately held by individuals.

At inception, the proposals for EBOI are based around the idea of access being provided to 'competent authorities' such as regulators and law enforcement agencies. Predictably, there are already calls from NGOs for such registers to be made public. While many jurisdictions (for example, Jersey and Bermuda) have required beneficial ownership information on companies to be provided to them for many years, the effect of the EBOI proposals seems likely to require the creation of trust registers in many jurisdictions for the first time. It remains to be seen how these registers would work in practice. It is proposed that there will be an annual requirement to update the register to note any material changes. Potentially, this annual update will need to be provided in parallel to CRS and FATCA-type data, which tax authorities required by the end of May, with reference to the position as at the end of the prior calendar year.

### iv Public registers of beneficial ownership

The UK's People with Significant Control (PSC) register has been operational since 30 June 2016. It will be interesting to see the approach taken by EU jurisdictions in implementing the Fourth Anti-Money Laundering Directive. The PSC register substantially implements that directive in the UK, although its terms are not completely aligned with the Fourth Anti-Money Laundering Directive.

It is already apparent, in considering the information to be provided for the PSC register, that the ultimate quest to name natural persons rather than entities can give rise to some unexpected results. As with the CRS, particular difficulties arise where a UK company is ultimately controlled by a trust. This is because in considering the application of the rules in a trust context, one does not name, for example, corporate trustees. One is required to look to individuals who control those corporate entities. This means that the information provided with respect to those natural persons is unlikely to have any meaningful connection with stated objectives of the legislation in providing greater clarity for third parties dealing with the company as to who, ultimately, influences its activities. It is also striking that in cases where the corporate trustee is owned by a listed group or controlled by a private equity firm, there may, in some circumstances, be no ultimate PSC required to be named.

If one contrasts the position here with that applicable to the French Trust Register, (ironically, made public on the same date, 30 June 2016), the information required to be made public under the French Register is extensive and, unlike the PSC register, requires one to provide details of the beneficiaries as well as the names of the trust. There is also a separate requirement to file a stand-alone 'event-based return' if the terms of a trust are modified in any way during the course of a calendar year.

The EU has recently published proposals to amend the Fourth Anti-Money Laundering Directive in the wake of the Panama Papers. In this context, it seems likely that the initial decision taken in 2015 not to require details of trusts to be placed on a public register will be reversed. If this proposal gains wider support (as seems likely), it will be interesting to see whether it will be modelled on the French register or will be more analogous to the UK PSC register.

### iii Conclusion

In closing, it has never been more important for advisers to give balanced and considered advice to families on how best to structure their arrangements, not just in the light of prevailing family circumstances and tax considerations, but also in the knowledge of the likelihood that information about the holding structure will be subjected to greater regulatory, government and potentially public disclosure in the years ahead. The paradigm that currently prevails in Western Europe is markedly different from that applicable in Asia, the Middle East and Latin America.

It remains to be seen whether, in the long term, many international families who have compliant structures that are fully disclosed to tax authorities will favour the United States as a tax-favoured jurisdiction from which to administer their family structures. This is on the basis that with a thriving domestic trust industry, the US could well be seen as a reputable jurisdiction which protects families from unwarranted public intrusion into their personal affairs to a greater extent than traditional offshore finance centres if beneficial ownership registers do become public in due course.

**John Riches**
RMW Law LLP
London
August 2016

# Chapter 13

# CYPRUS

*Elias Neocleous and Philippos Aristotelous*[1]

## I INTRODUCTION

Despite being among the smallest countries in terms of area and population, Cyprus has developed into one of the world's most important financial and business centres. It has numerous advantages, including a strategic location, membership of the EU and the eurozone, a mature and transparent legal system, world-class professional and financial services and a modern, business-friendly tax regime, which offers attractive planning opportunities.

During the years following perestroika, Cyprus developed into the portal of choice for investment from the West into the rapidly developing economies of Russia and central and eastern Europe.

Even the largest Russian and eastern European companies have a substantial degree of owner involvement, and high net worth individuals from the region have found Cyprus an excellent location for their personal financial affairs. In 1992 Cyprus enacted the International Trusts Law, which gave investors from overseas formidable asset protection and tax mitigation opportunities and allowed individuals from jurisdictions with forced heirship regimes effectively to regain testamentary freedom.

The links between eastern Europe and Cyprus extend beyond finance. Both share a common Orthodox religious culture and Cyprus is home to tens of thousands of Russians and eastern Europeans.

Today, Cyprus is a low-tax jurisdiction with a modern tax regime and an extensive network of double taxation treaties, allowing effective tax planning. All forms of succession taxes were abolished in 2000. It has world-class professional and financial services and a robust legal infrastructure founded on common law. It enjoys an excellent climate and a high standard of living, and its strategic location at the crossroads of Europe, Asia and Africa gives it a cosmopolitan atmosphere. While Russia and central and eastern Europe remain the key

1 Elias Neocleous is vice-chairman of the firm and head of the corporate and commercial department and Philippos Aristotelous is a partner at Andreas Neocleous & Co LLC.

markets for Cyprus, China, India and the Middle East are also significant. The island is home to a large number of extremely wealthy individuals and the financial base for many thousands of non-residents.

## II TAX

### i Introduction

Cyprus offers a benign personal tax system, with generous allowances and a top rate of 35 per cent on taxable income in excess of €60,000. Interest and dividends are exempt from income tax. A special defence contribution (SDC tax) is payable on interest, dividends and rents received by individuals if they are both resident and domiciled in Cyprus (see below); individuals who are resident but not domiciled in Cyprus are not liable to SDC. There are no succession taxes and all capital gains apart from those deriving from the disposal of real estate located in Cyprus are exempt from taxation.

### ii Personal income tax

The tax year is the calendar year and individuals are considered to be resident if they are present in Cyprus for more than 183 days in the relevant year. Cyprus residents are taxed on the basis of worldwide income, irrespective of whether it is remitted to Cyprus. Husbands and wives are taxed separately. Persons who are not resident in Cyprus are subject to income tax on income accruing or arising from sources in Cyprus.

Personal income tax rates are as follows:

| *Income band* | *Tax rate* | *Cumulative tax at top of band* |
|---|---|---|
| €00,000–€19,500 | 0 per cent | 0 |
| €19,500–€28,000 | 20 per cent | €1,700 |
| €28,000–€36,300 | 25 per cent | €3,775 |
| €36,300–€60,000 | 30 per cent | €10,885 |
| €60,000 and above | 35 per cent | – |

Relief is given for donations to approved charities, professional and trade union subscriptions, life insurance premiums and contributions to pension, social insurance and welfare funds. Relief may also be available under a double taxation treaty.

Resident expatriate employees or secondees are subject to income tax on their worldwide income at the rates shown in the table above.

For tax years up to and including 2014, individuals becoming tax-resident and taking up employment in Cyprus were entitled to an exemption of 20 per cent of their annual income from employment in Cyprus for the first three years of residence. The exemption was limited to €8,550 per annum. With effect from the 2015 tax year, the exemption will be extended to five years, but it will be available only until the year 2020.

In 2012, an alternative exemption was introduced for highly paid individuals, exempting 50 per cent of the first five years' income from employment in Cyprus of a person who was not previously resident in Cyprus, provided the income from employment in Cyprus exceeds €100,000 per annum. With effect from the 2015 tax year, the exemption period of five years will be extended to 10 years. In respect of employments that began on or after 1 January 2015, the exemption is not available to anyone who was resident in Cyprus in any three of the five tax years preceding the year in which the employment in Cyprus began, or to anyone who was resident in Cyprus in the year preceding the year in which the employment began.

The exemption is available in respect of any tax year in which income from employment exceeds €100,000, irrespective of whether the income falls below that amount in any year, provided that when the employment started the income exceeded €100,000 and the tax authorities are satisfied that the variations in the annual income are not made for the purpose of obtaining this tax benefit.

The two exemptions are mutually exclusive, each taxpayer may only claim one of them.

***Exemptions and special cases***

The following are exempt from income tax:

*a* interest and dividends receivable by individuals (these are subject to SDC tax – see below);
*b* lump sums received on retirement;
*c* profit from the sale of shares;
*d* capital sums from approved life assurance policies and provident or pension funds;
*e* income from employment services provided abroad to a non-resident employer or an overseas permanent establishment of a resident employer for a period exceeding 90 days in the tax year;
*f* certain pensions, such as a widow's pension;
*g* salaries of officers and crew of ships owned by a Cyprus shipping company that sail under the Cyprus flag and operate in international waters; and
*h* income from a qualifying scholarship, exhibition, bursary or similar educational endowment.

For income tax purposes a 20 per cent deduction is allowed from rental income received.

The first €3,420 per annum of any foreign pension is free of tax and the excess over that amount is taxed at 5 per cent.

***Special defence contribution***

SDC tax is payable by individuals who are both resident and domiciled in Cyprus on interest, dividend and rentals received at the rates set out below. Individuals who are resident but not domiciled in Cyprus enjoy a full exemption from SDC on all investment income generated on a worldwide basis. Residence is determined in the same way as for income tax purposes.

The principles set out in the Wills and Succession Law, which follow the principles of English common law, are used to determine domicile. In summary, an individual acquires a domicile of origin at birth. It is generally the same as the domicile of the father at the time of birth, and in exceptional cases that of the mother. A domicile of origin may be replaced by a domicile of choice if in actual fact an individual permanently establishes himself or herself in another country with the intention of living there permanently and dying there. However, an individual will be deemed to be domiciled in Cyprus if he or she has been a tax resident for 17 or more of the 20 tax years immediately preceding the year of assessment.

Taken together with the income tax exemption, this means that an individual who is not domiciled in Cyprus is exempt from all Cyprus taxation on interest and dividends from all sources.

Relief or credit for tax paid abroad may be available either under the terms of a double tax treaty or by way of unilateral relief.

| *Type of income* | *Rate* |
|---|---|
| Dividends | 17%* |
| Interest | 30% |
| Rents | 3% of 75% of the rent |
| * 3% on dividends paid by collective investment schemes | |

***Special contributions by private sector employees and pensioners and the self-employed***

For the tax years 2014 to 2016 inclusive, a special contribution is payable on remuneration and pensions (excluding overseas pensions) paid to private-sector employees and the self-employed at the following rates:

| *Gross monthly amount* | *Contribution* |
|---|---|
| Below €1,500 | 0% |
| Between €1,500 and €2,500 | 2.5% (minimum €5) |
| Between €2,500 and €3,500 | 3% |
| Above €3,500 | 3.5% |

In the case of an employee, the special contribution is borne by the employer and the employee in equal shares.

### iii Capital gains tax

There is no taxation of capital gains in Cyprus apart from gains made on the disposal of real estate located in Cyprus or on the shares of companies holding real estate in Cyprus, to the extent that the gains are attributable to the real estate holding. To stimulate the real estate market, an exemption was introduced for immoveable property acquired between 16 July 2015 and the end of 2016, provided that the property was acquired on an arm's-length basis and not under the foreclosure provisions of the Transfer and Mortgage of Immoveable Properties Law. Any gain on the disposal of the property will be exempt from capital gains tax, irrespective of the date of disposal.

As an added incentive, the normal transfer fees payable to the Department of Lands and Surveys on acquisition of immoveable property were discounted to 50 per cent of the standard rate until the end of 2016, provided that the property was acquired on an arm's-length basis and not under the foreclosure provisions of the Transfer and Mortgage of Immoveable Properties Law. Alternatively, if VAT is payable on the purchase of the property, no transfer fee is payable at all, provided that the sale agreement is deposited with the Land Registry by 31 December 2016. In July 2016, the reduction in transfer fees was made permanent by the Lands and Surveys Department (Fees and Rights) (Amendment) (No. 2) Law.

### iv Succession taxes

There are no succession taxes in Cyprus.

## III SUCCESSION

Cyprus's succession law reflects the cosmopolitan nature of the island and gives an interesting insight into its history. The current succession law dates back to when Cyprus was a British colony and the wording of the law and many of its provisions are unmistakably English, but Cyprus succession law also enshrines the concept of forced heirship, usually associated with civil law and Islamic countries, and recognises the rights of widows of polygamous marriages.

It has recently been modified by the entry into force of the European Succession Regulation, which applies a single national law of succession to a person's moveable and immoveable property on death, both for testate and intestate succession. The applicable law is that of the country of the deceased's habitual residence at the time of death, unless the deceased was manifestly more closely associated with another country, or the deceased elected in his or her will for their national law to apply, regardless of whether the European Succession Regulation applies in the state of their nationality or not.

Cyprus succession law is set out in a number of enactments, the most significant of which are the Wills and Succession Law (WSL) and the Administration of Estates Law. The WSL deals with both wills and intestacy. The part dealing with wills is based on the English Wills Act of 1837, whereas the part dealing with intestacy is based on the Italian Civil Code and reflects Continental law. Cyprus succession law therefore can be said to represent a mixture of common and civil law, in roughly equal proportions.

If an individual dies leaving certain categories of relatives, part of his or her estate, known as the statutory portion, is reserved for them and distributed according to the rules of intestacy. The actual proportion of the net estate taken up by the statutory portion varies according to which relatives survive the deceased person and can be as much as three-quarters of the net estate.

Individuals who would otherwise be subject to the forced heirship provisions can easily regain the freedom to dispose of their property as they wish by using a domestic trust or a Cyprus international trust.

## IV WEALTH STRUCTURING & REGULATION

### i Introduction

As with succession law, Cyprus offers wealth-holding structures typical of both common law jurisdictions (in the form of trusts) and civil law jurisdictions (in the form of foundations). Foundations are rarely used in practice because of the high degree of bureaucracy under the Associations and Foundations Law of 1972 and trusts overwhelmingly predominate. However, a new law on foundations is expected to be enacted shortly, which will simplify procedures and which should lead to an increase in the use of foundations.

Cyprus's first law on trusts, the Trustee Law of 1955, dates back to when the island was a British colony and is a near replica of the English Trustee Act 1925. The English doctrines of equity were formally introduced into the post-independence legal order by Section 29 of the Courts of Justice Law, Law 14 of 1960, which requires the courts to follow English common law and equitable principles unless there are other provisions to the contrary under Cyprus law or such adherence would be inconsistent with the Constitution of Cyprus.

### ii The Cyprus international trust

In 1992 Cyprus created a state-of-the-art international trusts regime with the enactment of the International Trusts Law, Law 69 of 1992 (the 1992 Law), which provides a framework for the establishment of trusts in Cyprus by non-residents.

The 1992 Law introduced a new type of trust, known as the international trust, with tax planning advantages and robust asset protection features. Like similar laws in other jurisdictions, the 1992 Law was not a comprehensive codification and the Trustee Law 1955 applies to international trusts except where the 1992 Law provides otherwise.

Cyprus international trusts proved extremely popular with high net worth individuals and professionals and a number of other jurisdictions introduced similar regimes. Towards the end of the first decade of the current century it became apparent that the international trusts regime in Cyprus had fallen behind those of its competitors. The International Trusts (Amendment) Law of 2012, which entered into force in March 2012, addressed the perceived deficiencies and brought Cyprus back to the forefront of leading trust jurisdictions. It clarified the eligibility provisions for Cyprus international trusts, strengthened their already formidable asset protection features, gave settlors far more flexibility than under the 1992 Law and widened trustees' investment powers. It also made several technical amendments and aligned the International Trusts Law with the EU acquis communautaire. The Amending Law of 2012 does not repeal and replace the 1992 Law but instead builds on it. Section 16 provides that it applies to trusts created before it came into effect.

The Cyprus international trust is the structure of choice for non-resident settlors and in the following paragraphs the main features under the International Trusts Law, as amended, are described.

#### *Definition of a Cyprus international trust*

The 1992 Law restricted the availability of international trusts to prevent tax avoidance by Cyprus residents. It provided that neither the settlor nor any beneficiary could be a permanent resident of Cyprus, but this is inconsistent with the EU principle of free movement of persons. Under the International Trusts Law, as amended, the restrictions were relaxed and a Cyprus international trust is now defined as trust in respect of which:

- *a* the settlor (whether a natural or legal person) is not a resident of Cyprus for the calendar year prior to the creation of the trust;
- *b* at least one of the trustees for the time being is, during the whole duration of the trust, a resident of Cyprus; and
- *c* no beneficiary (whether a natural or legal person) other than a charitable institution is a resident of Cyprus for the calendar year prior to the creation of the trust.

All references to the term 'resident' of Cyprus in the amended law now have the same meaning as under the Income Tax Laws, 118(I) 2002 as amended. Moreover, the removal of the prohibition against residence in Cyprus ensures full compliance with EU law regarding the free movement of persons and capital, and freedom of establishment. The removal of the prohibition on ownership of immoveable property in Cyprus avoids any difficulties that might otherwise arise if the settlor or any beneficiary were subsequently to take up residence in Cyprus.

***Asset protection features of the Cyprus international trust***

Asset protection trusts ring-fence the settlor's assets from persons who may have a claim against him or her. They developed as a response to the substantial amounts of damages awarded by juries in civil liability cases in the United States, particularly in medical malpractice claims. Notwithstanding the availability of professional indemnity insurance, some professions still involve a high risk of being on the receiving end of a claim that could be financially disastrous. An asset protection trust adds another layer to the defences. They are also invaluable in a variety of other contexts. In personal life, in light of the substantial awards that courts in certain jurisdictions are making, an asset protection trust may be used to provide added reassurance against claims on breakdown of marriage or civil partnership, particularly for individuals from jurisdictions where prenuptial agreements are ineffective. Many countries have forced heirship provisions in their succession law, reserving a specified portion of the deceased's estate for relatives, and an asset protection trust may provide a means of regaining freedom of testation.

By their nature, all trusts provide an element of asset protection, by segregating the assets held in trust from the settlor's general assets, which would be available to satisfy his or her debts or, in the worst-case scenario, would pass to his or her trustee in bankruptcy; however, the Cyprus international trust has several further advantages.

The first is that the International Trusts Law contains a very strong presumption against avoidance of a Cyprus international trust. Unless the court is satisfied that the trust was made with intent to defraud persons who were creditors of the settlor at the time when the payment or transfer of assets was made to the trust, the trust will not be void or voidable, notwithstanding the provisions of any bankruptcy or liquidation laws of Cyprus or any other country and notwithstanding the fact that the trust is voluntary and without consideration or that it is for the benefit of the settlor or his or her family members. The burden of proof of the settlor's intent to defraud lies with the person seeking to set aside the transfer. Furthermore, any action for avoidance of the trust or setting aside of the transfer must commence no later than two years after the assets were transferred to the trust.

These provisions, particularly the requirement to prove intent to defraud on the part of the settlor, set the bar very high for the claimant trying to set aside a transfer to a Cyprus international trust. Even though the standard of proof is the balance of probabilities, rather than the criminal standard, the claimant must still establish that the trust was more likely than not a fraud. This is a difficult standard to meet in practice and the burden of proving fraud is higher than is usual for civil cases. In practice, the claimant would need very strong evidence to show that the settlor intended to defraud his or her creditors. A claimant domiciled outside the EU without assets in Cyprus would be required to provide security for costs under Order 60 of the Civil Procedure Rules.

Protection against forced heirship and similar claims is provided by Section 3(i) of the 1992 Law, which stipulates that the laws of Cyprus or of any other country relating to inheritance or succession will not in any way affect any disposition of assets to a Cyprus international trust.

The Amending Law of 2012 strengthened these defences by explicitly providing that any question relating to the validity or administration of an international trust or a disposition to an international trust will be determined by the laws of Cyprus without reference to the law of any other jurisdiction. It also makes it clear that the fiduciary powers and duties of trustees, and the powers and duties of any protectors of the trusts are governed exclusively by Cyprus law. Furthermore, it provides that dispositions to a trust may not be challenged on the grounds that they are inconsistent with the laws of another jurisdiction, for example regarding family and succession issues, or on the grounds that the other jurisdiction does not recognise the concept of trusts.

Finally, the Amending Law of 2012 entrenches jurisdictional protection by providing that an international trust containing a choice-of-law clause in favour of Cyprus law is fully protected from unfounded foreign judicial claims as a matter of public policy and order.

These provisions further reinforce the already formidable asset protection features of the Cyprus international trust.

In another area, Cyprus has a distinct advantage over many other Commonwealth countries, in particular the Caribbean islands and Bermuda, in that it is not a party to the arrangements set out in Section 426(4) and (5) of the Insolvency Act 1986, in terms of which British courts and the courts of certain other jurisdictions are required to assist each other in insolvency cases.

Furthermore, it should also be noted that the Charitable Uses Act 1601 (also known as the Statute of Elizabeth), which invalidates arrangements made to hide assets from future creditors, is expressly negated in Cyprus.

***Reserved powers and interests***

The Amending Law of 2012 allows the settlor of a trust to reserve powers to himself or herself, to retain a beneficial interest in trust property, or to act as the protector or enforcer of the trust, all without affecting the validity of the trust. The powers that may be reserved are extensive, and include the power to revoke, vary or amend the terms of the trust, to apply any income or capital of the trust property, to act as a director or officer of any corporation wholly or partly owned by the trust, to give binding directions to the trustee in connection with the trust property and to appoint or remove any trustee, enforcer, protector or beneficiary. The settlor may impose a general stipulation that the trustees' powers are exercisable only with the consent of the settlor or any other person specified in the terms of the trust. The settlor may also reserve the power to change the governing law of the trust.

These provisions, which are similar to the corresponding provisions of Jersey and Guernsey law, give settlors great flexibility to adapt to changes in circumstances or objectives.

***Duration of trusts***

As was usual at the time, the 1992 Law restricted the maximum life of international trusts to 100 years from the date on which the trust came into existence. Only charitable trusts and non-charitable purpose trusts were allowed to exist in perpetuity. In the intervening period this restriction on the maximum life of trusts came to be seen as a disadvantage of trusts compared with foundations and several jurisdictions have removed any restriction on the duration of trusts.

The Amending Law of 2012 removed the restriction, by providing that from the date the amendment takes effect and subject to the terms of the trust, there will be no limit on the period for which a trust may continue to be valid and enforceable, and no rule against perpetuities or remoteness of vesting or any analogous rule will apply to a trust or to any advancement, appointment, payment or application of property from a trust. Except where the terms of a trust expressly provide to the contrary, no advancement, appointment, payment or application of income or capital from the trust to another trust is invalidated solely by reason of that other trust continuing to be valid and enforceable beyond the date on which the first trust must terminate.

Cyprus international trusts may, therefore, be established with unlimited duration.

***Trustees' investment powers***

The 1992 Law gave trustees freedom in terms of investment powers, merely requiring them to be exercised in accordance with the trust instrument and with the diligence and the prudence that a reasonable person would be expected to exercise when he or she makes investments. The Amending Law of 2012 extended trustees' investment powers, giving them the same investment powers as those of an absolute owner, allowing them to invest in a broader range of investments for the best interests of the beneficiaries. This brings trustees' investment powers into line with those of a trustee in England and Wales, and other trust jurisdictions that have followed the English Trustee Act 2000.

The Amending Law of 2012 also removed any doubt regarding trustees' ability to invest in Cyprus by including a new section specifically empowering trustees to invest in moveable and immoveable property both in Cyprus and overseas, including shares in companies incorporated in Cyprus.

***Confidentiality***

Section 11 of the International Trusts Law, as amended, sets out strict confidentiality obligations. It provides that, subject to the terms of the instrument creating the trust, the trustee, protector, enforcer or any other person may not provide any documents or information that disclose the name of the settlor or any of the beneficiaries or that relate to the trustees' deliberations regarding the exercise or proposed exercise of their powers and the discharge of their duties, or that relate to the financial position of the trust, except in accordance with a court order requiring disclosure. It gives the trustees power to provide a beneficiary with financial statements or any documents or information relating to their receipts and payments that form part of those accounts if the beneficiary has requested them and if, in the trustees' opinion, disclosure is necessary and in the best interests of the trust. Disclosure is limited to the accounts and the underlying documents and information concerning receipts and payments.

To remove any uncertainty over the consistency of these provisions with Cyprus's anti-money laundering legislation the Amending Law of 2012 introduced a clause specifically requiring trustees to comply with and implement the relevant provisions of the Prevention and Suppression of Money Laundering Activities Law.

***Taxation of Cyprus international trusts***

Section 12 of the International Trusts Law as amended provides for a uniform tax regime applicable to all persons on the basis of a tax residency test. In the case of a beneficiary who is resident in Cyprus the worldwide income and profits of the trust are subject to Cyprus tax. In the case of a non-resident beneficiary only income and profits earned from sources within Cyprus are subject to Cyprus tax.

Any beneficiaries who elect to become Cyprus tax residents will be subject to taxation on their worldwide income, like any other Cyprus tax resident. Non-resident beneficiaries will be subject to Cyprus taxation only on any Cyprus-source income.

For trusts that have only resident beneficiaries or only non-resident beneficiaries, the application of these principles is very straightforward. Where a trust has both resident and non-resident beneficiaries, the tax authorities will determine the tax treatment by reference to the scope of rights that the respective beneficiaries have in the trust, as set out in the trust instrument.

***Regulation of fiduciary service providers***

The Law Regulating Companies Providing Administrative Services and Related Matters of 2012 (Law 196(I) of 2012) as amended (the ASP Law) provides a comprehensive framework for the regulation of fiduciaries, administration businesses and company directors. As well as implementing the Third EU Anti-Money Laundering Directive as it applies to trust and company service providers, it aims to protect users of trust and fiduciary services by putting in place a robust regulatory system and accounting and reporting requirements.

The ASP Law applies to persons and companies providing relevant fiduciary and other corporate services relating to the administration or management of trusts and companies in or from Cyprus, including directorship and secretarial services provided by a legal person, including acting as an alternate director or secretary, services such as holding of shares of legal persons in a nominee or trustee capacity, provision of a registered office, services related to the opening and operation of bank accounts and services for the ownership of financial assets on behalf of third parties. Providers of relevant services must comply with specified criteria regarding their professional and academic qualifications, experience and their internal procedures. Private trustee companies belonging to the beneficiaries of the trust or their close relatives are outside the scope of the ASP Law provided that they have a representative in Cyprus who is accessible and accountable for anti-money laundering purposes.

The ASP Law provides that relevant services may be offered only by persons or legal entities that hold a licence from the Cyprus Securities and Exchange Commission (CySEC) or who are specifically exempted from the licensing requirement. Lawyers and accountants who are regulated by their respective regulatory bodies (the Cyprus Bar Association (CBA) and the Institution of Certified Public Accountants of Cyprus (ICPAC)) are exempt from the need to obtain a licence but must comply with the other requirements of the ASP Law.

When establishing trusts, service providers are required to obtain documentary evidence of identity of the settlor, the trustees, the beneficiaries (or information on the class of beneficiaries including the beneficiaries to whom any distributions have been made pursuant to the trust) and others associated with the trust, as well as information on the activities of the trust, and keep this information available for inspection by the relevant supervisory body on request. Service providers must put in place adequate arrangements to segregate and account for clients' funds and they must comply fully with all anti-money laundering legislation. They are subject to continuous monitoring in this regard and CySEC may appoint inspectors to investigate their affairs.

Each of the supervisory bodies for the purposes of the ASP Law (CySEC, the CBA and ICPAC) is required to maintain a register of trusts established by the service providers they regulate, containing the following information:

*a* the name of the trust;

*b* the name and full address of every trustee at all relevant times;

*c* the date of establishment of the trust;

*d* the date of any change in the law governing the trust to or from Cyprus law; and

*e* the date of termination of the trust.

Any Cyprus-resident trustee of a trust governed by Cyprus law is obliged to notify the relevant supervisory body of the relevant information within 15 days from the creation of the trust or the adoption of Cyprus law as the law governing the trust, as applicable. Subsequent changes in any relevant information, including termination of the trust or a change in the governing law from Cyprus law, must similarly be notified within 15 days. In the event of termination of the trust or a change in the governing law from Cyprus law, the register will indicate that the trust has been terminated and the information on the trust will be kept for five years.

## V RESIDENCE & CITIZENSHIP

High net worth individuals are attracted to Cyprus because it gives them the best of all worlds, combining a benign tax and trusts regime without having to sacrifice quality of life or convenience. Cyprus is a highly developed EU Member State offering a high standard of living, excellent physical and institutional infrastructure and communications, and a very low incidence of crime, all in a Mediterranean climate. Furthermore, it offers individuals of good character investing in Cyprus the benefits of accelerated citizenship by naturalisation, with all the benefits of an EU Member-State passport.

The Civil Registry Law, 141(I) of 2002 provides for non-Cypriots of full age and capacity to acquire citizenship by naturalisation. Applicants are generally required to have lived in Cyprus for seven years prior to submitting an application. However, in 2013 the Cyprus government introduced a fast-track procedure that allows qualifying persons to obtain Cypriot citizenship by naturalisation on an accelerated basis. Applicants must own a permanent residence in Cyprus with a value of €500,000 or more excluding VAT and have no criminal record and no asset freezing orders outstanding against them. In addition they must satisfy at least one of the following criteria:

The applicant has invested at least €5 million in Cyprus in the following:

*a* acquisition of immoveable property (residential properties, commercial properties, hotels, and other similar types of properties). Undeveloped land does not qualify;

*b* acquisition of businesses or companies based and operating in Cyprus and employing five or more Cyprus nationals; or

*c* acquisition of financial assets such as bonds registered and issued by the Republic of Cyprus.

The applicant has deposits in Cyprus banks amounting to €5 million for a minimum term of three years. The deposits may be personal or corporate or held by a trust of which the applicant is the beneficiary.

The applicant has a combination of the investments specified in the preceding paragraphs amounting to at least €5 million.

The applicant was the holder of deposits in Bank of Cyprus or Laiki Bank at 15 March 2013 and incurred losses of €3 million or more as a result of the measures imposed on the two banks during March 2013. If the loss was less than €3 million the shortfall may be made up by investment in government funds or assets in Cyprus so that the aggregate of the loss and the investment amounts to €5 million.

The Council of Ministers has discretion to reduce the amounts specified above to €2.5 million for investors participating in a collective investment plan, provided the aggregate investment is at least €12.5 million.

## VI CONCLUSIONS & OUTLOOK

The International Trusts Law of 1992 gave Cyprus a state-of-the-art international trusts regime, with excellent tax mitigation and asset protection features. It was very well received, as evidenced by the large number of trust service providers established in Cyprus, and Cyprus's continuing popularity with settlors from the former Soviet Union. Over the ensuing 20 years, as other jurisdictions modernised their trusts legislation, Cyprus lost some of its competitive edge, though the basic structure provided by the International Trusts Law remained sound. The 2012 amendments brought the Cyprus international trust regime back to the cutting edge internationally, giving Cyprus the most modern and favourable trust regime in Europe, and providing settlors and beneficiaries with the highest possible degree of protection, confidentiality, flexibility and assurance. This protection has been reinforced by the implementation of an effective, but unobtrusive, regulatory regime, which preserves confidentiality. The accelerated citizenship programme has proved effective in attracting investment into Cyprus and the new 'non-domiciled' regime, which exempts investment income from all forms of Cyprus tax, together with income tax exemptions for higher earners and capital gains tax exemptions, will be a further incentive. The proposed new law on foundations will make available an alternative structure for those who may prefer that option.

## Appendix 1

# ABOUT THE AUTHORS

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Elias Neocleous is vice-chairman and head of the corporate and commercial department of Andreas Neocleous & Co LLC. He is a graduate of Oxford University and a barrister of the Inner Temple, and was admitted to the Cyprus Bar in 1993. He is a founder member of the Franchise Association of Greece, a member of the International Bar Association and the International Tax Planning Association, an honorary member of the Association of Fellows and Legal Scholars of the Center for International Legal Studies, honorary secretary of the Limassol Chamber of Commerce and Industry and serves on the committee of STEP Cyprus. His main areas of practice are banking and finance, company matters, intellectual property law, international trade, tax and trusts and estate planning, and he has many publications to his credit in the fields of corporate, taxation and trust law.

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Philippos Aristotelous is a partner in the corporate and commercial department of Andreas Neocleous & Co LLC. He graduated in law from the University of Kent in 2003. He is a barrister of the Inner Temple and was admitted to the Cyprus Bar in 2005. Mr Aristotelous specialises in international taxation and trusts. He was the national reporter for the Tax Committee of the International Bar Association from 2009 to 2011 and he is a member of the Society of Trust and Estate Practitioners and the International Tax Planning Association.

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