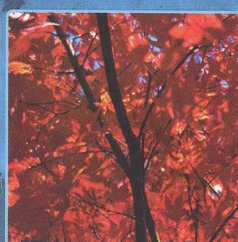
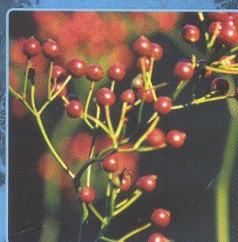
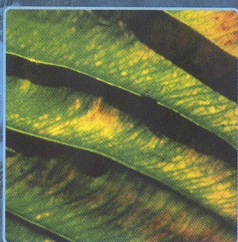
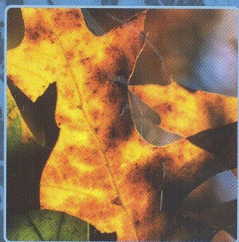


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Cyprus

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1. INTRODUCTION

a. History and background

The Republic of Cyprus is an independent sovereign republic established in 1960. Previously, Cyprus was a colony of Great Britain, and before that, a part of the Ottoman Empire. Its written constitution is derived from the London and Zurich Agreements of the late 1950s.

Cyprus is the third largest island in the Mediterranean, and is located in the Levant, about 40 miles south of Turkey's southern coastline. Its population is 800,000 across a total area of 900,000 square kilometres. Its security is complimented by the presence of the British Sovereign Bases possessing 99 square miles of British territory.

The strategic importance of Cyprus to Greece, Turkey and the UK explains why independence was brokered in such an unusual way. Certain clauses of the Constitution may not be changed. Other articles require a majority, both of Greek Cypriots and Turkish Cypriots, whose ethnic identity is recognized and entrenched in the Constitution. Despite troubles between the two ethnic groups since independence, the Republic continues to thrive.

The growth of Cyprus as an

international financial centre began with concessionary rates of corporation tax, together with the conclusion of tax treaties with countries in Eastern Europe and the former Soviet Union.

In 2004 Cyprus became a member state of the EU.

The currency is the Cyprus pound (CYP).

b. Legal system

Cyprus has an independent and separate judiciary. The constitution features legal principles such as the separation of powers and fundamental rights and liberties, with certain obligations. These are afforded not only to Cypriots but also to all other persons. In 1962 Cyprus signed the *European Convention on Human Rights (Ratification) Law 39 of 1962*.

The Constitution is the supreme legal authority. International agreements, conventions and treaties (as long as they are faithfully observed by both signatories) are superior to statute and the common law (and its rules of equity). Statute law is a combination of those British Acts of Parliament that were in force in Cyprus on the day before independence and the Republic's statutory law that has followed.

2. SOURCES OF LAW

a. Trust creation and administration

The primary source of trust law is English common law and the colonial regulation *CAP193 Trustees*, which is based upon the English *Trustees Act 1925*. In 1992 the *International Trusts Law 1992* ("ITL") was introduced. The ITL builds on existing law, modifying it in certain instances. A trust formed in accordance with the ITL is known as a Cyprus International Trust ("CIT"). However, its provisions are not available for permanent residents of the Republic.

b. Property, estate and probate

The majority of property, estate and probate law is English in origin. The rules governing intestacy are based upon the Italian Civil Code.

Property rights and their enjoyment are protected in the Constitution.

3. TRUSTS

a. Introduction

Cyprus law expressly adopts common law and equitable principles of English law. The civil and criminal courts follow these principles unless otherwise mandated by statute law or the Constitution. The ITL was designed with the intention of bringing international trusts into line with global developments at the time. The ITL does not apply, however, in cases where a settlor is a permanent resident of Cyprus.

b. Most frequently used trusts

Trusts being administered by trustees in Cyprus for domestic purposes are categorized as private or public. The CIT is the most common arrangement for international structures.

CITs are useful for inheritance and tax planning, and include special features such as protection from inheritance rules of other jurisdictions.

Both CITs and private trusts can be used to structure pension

NEW DEVELOPMENTS

- Full membership of the European Union ("EU") in May 2004;
- Entry to the European Exchange Rate Mechanism to adopt the Euro in 2007;
- Lifting of exchange controls;
- Implementation of EU's

Savings Directive;

- Rejection of the UN's Annan Plan for the full reunification of the island; and
- Conclusion of tax treaty with Lebanon, bringing the total number of tax treaties in force to 41.



schemes, employee incentive schemes and family trusts, whereas CITs and public trusts can be used for charitable purposes.

CITs must appoint and retain at least one trustee who is resident in Cyprus at all times. That person may be either natural or juristic. There is provision within the ITL for the transfer of a CIT from Cyprus to another suitable jurisdiction.

c. Proper law of a trust

Cyprus is a member state of the *Hague Convention on Private International Law*. Although a signatory of the *Hague Convention on the Law Applicable to Trusts and on their Recognition*, July 1, 1985, Cyprus has not yet ratified the treaty. Cypriot courts take the Convention into account when considering trust matters of private international law.

In reaching a decision about jurisdiction, the court takes into account the place of administration, *situs* of the trust's property and objects of the trust.

d. Creation of a trust

i. Validly constituted trusts

Cypriot trusts must be properly constituted in accordance with English legal principles or the ITL. Furthermore, a settlor's intentions to settle a trust must be demonstrably certain. Finally, the property of a trust and its beneficiaries must be verifiable.

Trusts can be created orally. However, those involving land must be in writing.

ii. Duration and termination of a trust

Private trusts ordinarily endure for a "life in being" plus 21 years. However, the ITL offers duration of either up to 100 years or perpetuity in the case of a "purpose" trust. Public trusts may also endure without limitation.

iii. Beneficiaries

Private trusts must have beneficiaries who can enforce the trusts vested in the trustees; otherwise, the trust will fail and its property will revert to its settlor. However, CITs may have objects rather than beneficiaries, as long as there is an appointed enforcer of the trusts, and the distribution of trust property upon cessation is clearly defined.

The rights attaching to a beneficial interest give beneficiaries access to the court as regards the proper execution of a trust. If appropriate, the court will compel trustees to discharge their obligations and make restitution for any breach of trust that has resulted in loss. Where all beneficiaries of a trust are known, *sui juris*, absolutely entitled and in agreement with one another, they can bring a trust to an immediate dissolution.

The beneficiary who is entitled to a fixed interest may sue to enforce an entitlement. In the case of a discretionary trust, a beneficiary may bring an action against the trustee if that trustee has not exercised the discretions required under the trust instrument.

iv. Trustees

The powers granted to a trustee are primarily found in the trust instrument, although other powers may be granted by statute or court order. Trustees have a duty to administer a trust's property diligently and prudently and to observe the highest standards of integrity. If they fail, they may be held personally liable. Usually one trustee is appointed, however, where the trust property includes land, there must be at least two trustees. Trustees must always act unanimously, unless the trust instrument provides otherwise. The number of trustees shall not exceed four in number.

v. Protectors

Although the law is silent in this regard, protectors of a trust may theoretically be appointed. Protectors have a fiduciary duty to act in the best interests of a trust.

vi. Role of courts

The court may enforce trusts on behalf of beneficiaries. Furthermore, the court may appoint and replace trustees, as well as provide authorization, indemnification and directions in certain circumstances.

e. Trust administration

i. Investment

There are special provisions for CITs that allow trustees to make any investments subject to the terms of the trust and the satisfaction of the "prudent

person" test. Other private and public trusts must invest in statutorily authorized investments.

ii. Maintenance and advancement

Trustees are authorized under *CAP113 Trustees* to advance up to half of a presumptive share of capital to a beneficiary, subject to any beneficiary's prior interest. In addition, trustees may accumulate income during a beneficiary's minority or apply it for the minor's maintenance, advancement or general benefit.

iii. Variation of a trust

The British *Variation of Trusts Act 1958* ("VTA") was not enacted in Cyprus before independence and, as a result, the Cypriot courts have less power to vary or influence private and public trusts than they would otherwise have had. However, the provisions of the VTA were built into the ITL. As a consequence, the court can now vary a CIT on behalf of beneficiaries such as mentally handicapped persons or unborn children, provided that no material adversity accrues to other interested persons.

f. Confidentiality and disclosure

Trustees have a duty in equity to provide, when requested by a beneficiary, trust documentation such as the terms of the trust, particulars of trust property and accounts. Trustees also have a duty in equity to keep the trust's details confidential. This duty can be lifted by consent in the trust instrument.

g. Rights of creditors

i. Transfers into trust

Under bankruptcy law, a settlement into trust made two years before bankruptcy is void. Similarly, a settlement made up to 10 years before bankruptcy, if the bankrupt cannot show that there was solvency on the bankrupt's part at the time of settlement, is void. With the establishment of CITs, it has become possible to settle property more effectively, since creditors must bring an action within two years of a settlement's commencement in order to make a qualifying claim. Also, creditors must show that a settlor was insolvent at the time of making the settlement and that a settlor intended to defraud the creditor.

ii. Limitation period

Actions to be brought against trustees must be commenced within six years of the cause of action. Where the cause of action has been concealed by fraud, the period of limitation begins to run from the time of discovery. For minors, incapacitated persons, the unborn, and beneficiaries with a future interest, the limitation period does not begin until discovery of the cause of action.

iii. Rights of trustees and beneficiaries

Trustees may be indemnified from and have lien over trust property.

4. COMMONLY USED LEGAL ENTITIES

Public limited companies can be incorporated, but the private limited company is the pre-eminent legal entity in Cyprus. In addition, branches of foreign companies and international partnerships are in regular use. Companies may be limited by shares or by guarantee or a combination of both.

The law governing companies is contained in *CAP113 – Companies Law* (as amended). Amendments since independence have tended to be as a result of bringing Cypriot law into harmony with EU law. Legislation is expected in 2005 regarding the incorporation of the European company.

Public or private collective investment schemes taking the form of companies, unit trusts or international partnerships have grown in popularity since the introduction of legislation in 1999. Such schemes are known for their tax-efficient qualities. The Central Bank of Cyprus regulates the probity of this sector.

a. Incorporation

Private companies take about five days to incorporate after receiving the approval of the company name, which takes another three days. Practitioners often incorporate "shelf" companies and obtain name clearance in advance for their inventories. The checking of names is now possible online.

Incorporation occurs upon filing of the company's Memorandum and Articles of Association, confirmed by a Cypriot lawyer, but never earlier





than the date given on the Company's certificate of incorporation. The documents to be filed must be written in Greek (or Turkish); however, copies in any European language may also be filed as long as they are accompanied by an affidavit confirming that they are a true translation of the Greek script.

b. Capitalization

The minimum share capital of private companies is CYP 1,000. If a company intends to open an office in Cyprus, the current minimum is CYP 10,000. At present, the maximum capital duty payable is CYP 125. There are no exchange controls for foreign shareholders.

Shares in a company may be either ordinary, preference or redeemable. The rights of a particular class are set out in a company's Articles of Association.

c. Director requirements

Before acting as director of a Cypriot company, the applicant must provide proof of identity, together with that person's name, address, nationality and occupation. A company may have a single director that is a corporate body, provided the company's secretary is a different person.

d. Disclosure and other requirements

Cypriot law requires filing of financial statements and other documents with the Commissioner of Income Tax and the Registrar of Companies. The cost of an audit is comparatively low by European standards.

5. TAXATION

a. Introduction and developments

Direct taxation is principally based upon residency and charged on a resident's worldwide income. Individuals are resident in Cyprus if they spend more than 183 days in the country in a calendar year. Companies are resident if they are managed and controlled in Cyprus. A Cypriot company is not subject to Cypriot income tax on its worldwide income if it is managed and controlled outside Cyprus. Trustees must account for tax if a beneficiary of a trust is resident in Cyprus. All legal persons are liable for tax on income arising in Cyprus, subject

to relief provided through tax treaties or law.

Since January 1, 2000, the estate of a deceased person is not subjected to tax; however, within six months of death, the executor must file a statement of assets and liabilities with the Commissioner of Income Taxes.

As a full member of the EU, Cyprus has implemented laws relaxing bank confidentiality in order to facilitate the automatic exchange of information about bank interest paid to individuals who are resident in other member states of the EU.

b. Tax System

i. General concepts of tax liability

There are no estate, inheritance or gift taxes in Cyprus. Capital gains tax applies only to immovable property which is situated in Cyprus. Stamp duty on transactions is generally applicable. There is an annual Immovable Property Tax based on property values of 1980, along with a similar tax, in certain circumstances, upon any conveyance. Cyprus law provides for a value added tax ("VAT"). Also, a "defence tax", similar to a second income tax, is payable by residents.

ii. Rates and exemptions

Income tax, chargeable at different rates for individuals and companies, is calculated after the deduction of expenses incurred wholly and exclusively for the purposes of a trade, occupation or profession.

Capital gains tax, at a rate of 20%, is assessed only on crystallized gains on transactions of immovable property which is situated in Cyprus. The property is taxable irrespective of whether it is owned directly or indirectly. Exemptions apply to transfers on death and transactions between relatives up to the third degree.

VAT has cash flow implications for commercial enterprises, and is levied at 15% of an invoice's value. With some exceptions, this tax is usually fully offset or reclaimed by registered enterprises so as to have no effect on profits.

Income tax on companies is levied at 10% of taxable profits. If foreign income tax has already been paid, it may be offset against Cypriot income tax. In many cases, there will be no further

income tax to pay.

For individuals who are resident in Cyprus, taxable income is taxed at incremental rates that reach 30% when taxable income moves above CYP 15,000. Although dividends and interest are exempt from income tax, Cypriot residents must pay defence tax on this income at a rate of 15% (see (d) below).

Companies managing ships may opt for a special tonnage tax if it is more beneficial than income tax.

iii. Taxable period and filing requirements

The fiscal year is the calendar year. Individuals must file tax returns by the following April 30th. Companies are required to pay in the year of assessment itself (August 1, September 30 and December 31) based on estimates. When liability is finalized, penalties and interest may be payable.

c. International

i. Non-residents shareholders and trusts for non-residents

Shareholders (including persons owning shares through nominees) and beneficiaries of trusts who are not resident in Cyprus do not pay Cypriot taxes.

ii. Non-resident withholding taxes

Withholding taxes of between 5% and 10% are payable by non-residents on Cypriot income derived from intellectual property rights, film royalties, or entertainment and sporting activities.

iii. Tax treaties

Cyprus continues to implement double tax treaties and currently has over 40 in force.

d. Other taxes

The defence tax applies only to residents on certain kinds of passive income. Cypriot companies that are resident in Cyprus are liable at rates of 15% and 10% on dividends and interest, respectively. Where a Cypriot company qualifies for an "international participation exemption", the defense tax on dividends is eliminated. Moreover, if the taxpayer can show that foreign income taxes have already been paid on the foreign income, a foreign tax credit would apply.

e. Other relevant matters

Reorganization of corporate structures may be structured to utilize exemptions from capital gains tax and stamp duty. Unutilized losses may be transferred advantageously into the surviving company.

Pensions that are pursuant to contracts of service performed abroad and are payable to individuals who are residents of Cyprus are taxed at 5% for amounts exceeding CYP 2,000.

The EU's Parent/Subsidiary Directive has reduced the number of cases of EU withholding taxes being charged on dividends when paid to Cypriot companies.

Cyprus has enacted European law that provides for mutual assistance in matters of criminal and civil law. This has materially altered the legal landscape. In matters of tax collection this legal cooperation amounts to a sharing of sovereignty.

6. OTHER RELEVANT MATTERS

a. Anti-money laundering rules

Cyprus's law to prevent and suppress money laundering is in compliance with the latest Directive 2007/97/EC and the Financial Action Task Force's revised 40 Recommendations. The European Parliament is expected to adopt a third EU directive by mid-2005 when it will be implemented in all the EU's member states. It proposes *inter alia* to require trustees to verify the identity of beneficiaries of a trust.

7. RESOURCES

Websites

STEP's resources: www.step.org
The Central Bank of Cyprus: www.centralbank.gov.cy
Department of the Registrar of Companies: www.mcit.gov.cy
CIA – The World Factbook: www.cia.gov/cia/publications/factbook/geos/cy.html
Hague Conference on Private International Law: www.hcch.net

WEB REFERENCES

www.centralbank.gov.cy
www.mcit.gov.cy
www.cia.gov/cia/publications/factbook/geos/cy.html
www.hcch.net