

Trust Laws in Cyprus: An International Perspective

Paolo Panico (ed.)
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An excellent guide embracing various aspects of Trust Law in Cyprus is presented through the book *Trust Laws in Cyprus: An International Perspective* by Mr. Paolo Panico, a contributor and editor. The book offers an explanatory spectrum of different aspects of the operation of trusts within the Cypriot legal order.

The bibliography apropos of trusts in Cyprus is very limited. The book presents a comprehensive and practical approach to domestic trusts legislation and for the trusts formed under the Cyprus International Trusts Law (69/1992) as amended by the International Trusts (Amending) Law of 2012.

There are different contributors to each issue raised in the book, all having a legal background. The book tries to accumulate all the crucial facets of the everyday function of trust, but also provides an academic analysis of subjects that have not magnetised judicial review yet.

As an ex colony of the British Crown, Cyprus was endowed with the Common Law system. Trust Law cannot be an exception. Trust law remains unaffected despite other aspects of the Cypriot Law, which have been heavily amended or harmonised with the EU legislation. Still, the dominant legislation remains the Cap 193 (The Trustee Law of 1955), which reflects the UK Trust Law 1925.

The roots of trusts go back to the Crusades, when Crusaders needed a protection mechanism to safeguard their assets until their return from the Holy Land. The situation was not always smooth; thus, many ‘trusted’ people denied returning the assets. Crusaders complained to the King that this was unfair and not just, and, of course, the King remitted the issue to the Chancery. Therefore, realising that Trust Law is chained with Equity is imperative.

In the modern world, trusts have evolved into more complex structures, but the principle remains always the same: asset protection.

The book is divided into three different parts. Part I introduces the Cyprus legal system, domestic trust law, Vakfs, charitable trusts, and organisations. In the spotlight of Part II is the International Trust Law and other vital ramifications that need

to be illustrated for the reader to comprehend the entire operation of the Law. Part III deals with more practical matters like taxation and UBO registry developments.

In the first part of the book, a brief Introduction to Cypriot legal order is made by Ms E. Louca, trying to depict the legal environment under which a trust can operate. As mentioned before, English Law is the primary source of guidance, and substantial UK case law can be used as a beacon when trust disputes arise, or when there are any shadows of doubt about the mechanism of a trust.

The next chapter of Part I illustrates the operation of domestic trusts and the pre-requisites that need to be adhered to, for a trust to be valid. Furthermore, Ms C. Papacleovoulou – Vassiliou and E. Papacleovoulou demonstrate the different types of trusts, either express (e.g., fixed, discretionary) or implied (e.g., constructive and resulting) and also how immovable property can pass under a trust and the stamping requirements.

The next chapter of Part I accommodates an analysis of the Vakfs in the context of International Trust Law and a comparison with other jurisdictions. It is one of the most engaging chapters of the book. Vakfs is an unchartered area with limited bibliography and case law. Mr. Panico has scrutinised the matter, and his remarks indicate that this unexplored area has excellent potential to create a new market. The chapter describes the characteristics of the Vakfs, the role of Mutevelli and the reflective elements between the Vakfs and the trusts created under the International Trust Law.

Part I concludes with the analysis of Ms E. Drakou about charitable trusts and charitable organisations. This chapter highlights the creation of charitable organisations and organisations under the International Trust Law and Cyprus Charities Law. It appears that there are similarities with English Law regarding the establishment of Charitable Trusts. Thus, the Trustee Law of 1955 also has vital guidelines for forming such trusts, even under International Trust Law.

The second part of the book is focused on International Trust Law. The International Trust Law is a step forward for creating the same environment as other jurisdictions (e.g., Guernsey, Bermuda, BVI, etc.). The International Trust Law reciprocates the modern needs of non-residents looking for safe and secure jurisdictions to safeguard their assets.

The International Trust Law, as the book also underlines, must be read together with the Trustee Law of 1955. The International Trust Law is the backbone of the main benefits of prospective settlors looking for a malleable mechanism of protec-

tion over their assets; many focal issues, like the role of trustees and the rights of the beneficiaries, are still extracted by the Trustee Law 1955, English Law cases, but also from other jurisdictions which have developed similar legislations (e.g., Guernsey, British Virgin Islands, etc.)

Moreover, it is also significant to note that International Trust Law seeks to mitigate the strictness of English Law in some matters, like the reserved powers of the settlor or the role of Protectors. Cyprus International Trust Law follows the path of other Common Law jurisdictions offering the same regime. Thus, legal practitioners or the Cypriot Courts must look to those jurisdictions for guidance.

The second part of the book starts with a thorough analysis of the sections of International Trust Law. Ms. Papacleovoulou – Vassiliou outlines the basic principles surrounding the operation of International Trust Law and explains the role of new amendments and how these improved the operation of the Law.

The next chapter of Part II deals with the reserved powers of the settlors. This section of the Law provides safety to a potential settlor since his control is not extinguished with the formation of the trust deed. Ms E. Yiolitis, the author of this chapter, navigates the reader to other jurisdictions with similar provisions in their legislation, to demonstrate how other jurisdictions familiarise their legislation with the modern needs of the settlors.

The leniency the Law provides to a prospective settlor also has a countereffect, as Ms. Yiolits illustrates. It is easy to raise suspicion that an international trust may be a sham or an effort to avoid taxation. It is also worth mentioning that UK Law is very reluctant to allow any leeway to settlors retaining reserved power. UK Tax Authorities (IRS) initiated most of the litigation. Any direct or indirect (e.g., option of buying back shares from the trust) reservation of powers by the settlors will be scrutinised.

In the next chapter of Part II, Ms. N. Xenofontos focuses on the beneficiaries' information rights issue. International trusts, like domestic trusts, create a triangle relationship among the settlor, trustee and beneficiaries. The relationship among those parties is not always smooth, and, especially when disputes arise among beneficiaries, the position of the trustees is vital. The basic undisputed principle is that the trustees always act to benefit the beneficiaries, which is the most important duty they must adhere to.

The flow of information to the beneficiaries depends on the nature of the trust (e.g., if it is a fixed trust, discretionary trust, etc.), and the position of the trustees varies. The balance between trustees and beneficiaries is thin. Trustees cannot op-

erate under a veil of secrecy, but on the other hand, beneficiaries are entitled to get informed, though not without limitations. The issue is not simple. It appears that the Court will finally filter cautiously any request of the beneficiaries and instruct the trustees which kind of information can be unveiled.

In the light of anti-money laundering legislation, it is interesting to examine how the trustees' duty to reveal information is affected. Anti-money laundering legislation imposes specific tasks and obligations to entities and physical persons providing particular services. Ms. Xenofontos points out the challenging nature of anti-money laundering Law and the fair balance that must be kept.

The next chapter of Part II concentrates on the duties of the trustees and their obligations towards the beneficiaries. As Mr. S. Georgiou mentions, the trustees have a duty of care to act according to the Law, and in case there are any ambiguities, they should address their request to the Court for directions.

The following chapter of Part II highlights the role of protectors. Protectors have a crucial role. The International Trust Law referred to a broad frame of powers conferred to protectors. Besides the ability of the settlor to maintain reserved power over the trust after its formation, the protector can also have similar capabilities. Thus, the choice of protector should be wise. As Ms. Yiolitis mentions, the role of the protector is not to substitute the trustee, but to constantly monitor the actions of the trustees.

Ms P. Kouzoupi, in the next chapter of Part II, provides an analysis of the non-charitable purpose trusts. International Trust Law allows the creation of such types of trust. This is a step forward since new horizons emerge and there are more options for potential settlors seeking flexibility. Moreover, Ms Kouzoupi references other jurisdictions that have developed non-charitable purpose trusts. Finally, Ms Kouzoupi expresses her concerns about the current legal framework and the need for modernisation.

Another controversial area analysed in the next chapter of the book by Mr. C. Constantinides and S. Marangos is the right of the trustees to apply to the Court for guidance. The right of the trustees is derived directly from the International Trust Law, and the UK case law is moving in the same direction. The complexity around this area emerges when it comes to the question of under which circumstances the trustee can apply to the Court. The Cypriot case law has not been reviewed by the Court of Appeal or Supreme Court, and the guidance is derived only from first instance Courts. The writers present the developments that took place in Jersey jurisdiction, but as the book points out, the area remains challenging.

The following chapter of Part II examines the duration of both domestic trusts and trusts under the International Trust Law and how the issue of perpetuities is managed under the International Trust Law.

In the next chapter of Part II, Ms. S. Kammitisi demonstrates the high level of protection Cypriot Law provides to family members under succession Law. The core of the succession Law in Cyprus is the protection of the family members. Thus, the Law does not allow the creation of a trust with a will, in contrast to UK Law, where the creation of a trust through a will is standard practice. Also, Ms. Kammitisi is looking at the operation of the trusts and their enforcement in other jurisdictions under international private Law, and more specifically under EU law and the Hague Convention.

In the next chapter of Part II, Mr. P. Economides presents a more thorough angle of the operation of the mechanism of trusts. Furthermore, Mr. P. Economides sheds light on potential pitfalls of the process of Law and how to avoid them.

Moreover, Ms. Xenofontos, in the next chapter of Part II, highlights the duties of the trustees but with more focus on their liability in cases where their actions are questionable or even if they have acted mistakenly.

The next chapter of Part II captivates a lot of interest. Ms. Xenofontos and Mr. Panico are discussing the domestic and International Trust laws under the prism of reform. It is crucial to emphasise that Cyprus is the only jurisdiction within the EU that caters to the mechanism of trusts. There is competition from other jurisdictions like Luxemburg, where there is a similar mechanism of foundations. Within the EU, Cyprus is the only Common Law jurisdiction that can offer trusts. In other words, Cyprus must take advantage of this position and be able to provide up-to-date legislation for individuals or business entities looking to take advantage of this regime. The International Trust Law needs to reflect a competitive business and convenient environment for the prospective settlors. On the other hand, the domestic legislation needs to be upgraded since the benefits are substantial. The authors present some examples (e.g., the International Trust Law to apply to domestic trusts) for reform, but especially the modernisation of the domestic trusts is not going to be an easy task.

In the final chapter of Part II, Ms. Papacleovoulou – Vassiliou reviews the existing case law concerning International Trust Law. The area is still under development since most case law derives from first instance Courts.

The third part has two chapters. In the first chapter, Mr. G. Economides analyses the taxation in domestic and international trusts under the Cypriot legislation. In the second chapter of the third part, Ms. Drakou evaluates the newly introduced obliga-

tions for the UBO registry and the duty of the involved parties to inform the different authorities in Cyprus.

Trust Laws in Cyprus is an excellent synopsis of the main trust law areas for domestic and international trusts. It is a fundamental addition to the Cypriot bibliography.

The present book is not addressed to legal practitioners only. Still, it can be an advantageous handbook for professional service providers, legal or physical persons acting as trustees, prospective settlors and beneficiaries who can draw on important information vis-à-vis their rights, obligations and duties under a trust.

Leonidas Psychakis