

## **Cyprus**

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### **Legal background**

#### **7.68**

While the Cyprus legal system is mainly based and developed upon the principles of common law, family law constitutes an exception. Cyprus family law is based upon Greek family law and is developed through case law. Some of the main laws that govern family law matters in Cyprus are the Conciliation Attempt and Spiritual Solution of the Marriage Law of 1990 (Law No 22/1990), the Family Courts Law (Law No 23/1990) and the Settlement of Matrimonial Property Law of 1991 (Law No 232/1991).

Pursuant to s 11 of the Family Courts Law, the family court is responsible to adjudicate all matters relating to matrimonial disputes. Such matters are defined as those relating to division of matrimonial property, dissolution of marriage, child custody and maintenance and any other marital or family dispute, provided that at least one of the spouses has his/her residence in the Republic of Cyprus for any continuous period of more than 3 months.

### **Property that is taken into account during divorce proceedings**

#### **7.69**

The legal framework relating to the property that can be taken into account during proceedings for the division of matrimonial property, in case of divorce, is provided by the Law Regulating Property Relations of Spouses (Law No 232/1991). Specifically, in the event of dissolution of marriage or separation of spouses and in cases where the property of one of the spouses has increased during the course of the marriage, then the other spouse, provided that he/she has contributed in any way in this increase, may file a court action requesting to receive the property that corresponds to such contribution. Pursuant to s 14(2) of the above law, the contribution of the one spouse to the increase of the property of the other is presumed to be at 1/3 (one third), unless proven otherwise. Property acquired by way of a gift, inheritance, legacy or other benevolent cause is not calculated towards the increase of the property of the spouses. In this sense and as interest in trust property is not expressly excluded it can be assumed that such interest can be taken into account during division of matrimonial property in case of divorce.

### **Laws to protect trusts from foreign divorce court orders**

#### **7.70**

The establishment and operation of trusts which are set up in Cyprus is mainly regulated by the Trustees Law, Cap 193 and by the Cyprus International Trust Law No 69/1992 as amended (CIT Law). The CIT Law has created one of the most efficient legal frameworks and as a result Cyprus International Trusts (CITs) are increasingly becoming one of the most valued asset protection, wealth management and estate planning tools.

A CIT is considered as a useful vehicle designed to offer settlors the opportunity to plan and regulate, amongst other things, the distribution of their estate to the beneficiaries of the trust, outside the provisions of any applicable succession laws. Trusts may therefore be created during the marriage, whilst ensuring that any assets transferred to the trustee are protected in the event of the dissolution thereof. Section 3 of the CIT Law provides that a settlor who in whatever manner transfers any property to a CIT shall be considered to have the capacity to do so, if at the time of such disposal such settlor is of full age and of sound mind under the law of the country of which is a resident. Also, all

matters arising in relation to an international trust or any transfer of assets to such trust are to be determined according to Cyprus law without reference to the laws of another jurisdiction.

Even though there are no specific legislative provisions stating that property held under a trust cannot be used to satisfy foreign divorce court orders, the general rule is that assets held under a trust are no longer considered as part of the settlor's property and therefore they cannot be used to satisfy any claim raised against the settlor unless it is proved that the trust was set up with the intention to defraud the settlor's creditors. Pursuant to s 3(2) of the CIT Law a CIT is not void and it cannot be invalidated in the event of the settlor's bankruptcy or liquidation of his or her property or in any action or proceedings against the settlor at the suit of his or her creditors, even though the trust may be voluntary and without consideration having been given for it and is for the benefit of the settlor, the settlor's spouse or children. Moreover as per s 3(3) of the CIT Law an action cannot be brought unless it is commenced within 2 years of the transfer of the property into the CIT. Any potential action to declare a transfer of property into a CIT void can be raised only in relation to transfers made within the 2 year period and not for transfers made earlier. There are conflicting views as to whether the intention to defraud must be of both the trustee and the settlor or whether something less than full intention on the part of the trustee will suffice. In the case of a unilateral declaration of trust only the settlor's intention is relevant. If a trust is found to be a 'sham' then any transfer of property to the trustees is cancelled and no property title is considered to have been transferred and the transaction can be set aside. A trust is considered to be a sham in case that it appears that it was validly created but in reality, it is not a trust but some other arrangement or simply an empty pretense.

## 7.71

Through the settlement of a trust, succession laws or any other applicable laws can be circumvented. The concept of trusts was devised to allow continuity of family property and succession in troubled times and it is essential for estate planning since an individual may, through the use of a trust, bypass the provisions regarding succession and distribute the estate in a different manner

It is important to note that s 3(4) of the CIT Law provides that no CIT or any transfer of assets thereto is void, voidable, liable to be set aside or invalid or subject to an implied term, nor is the capacity of any settlor, trustee, enforcer, protector or beneficiary to be questioned, nor is any settlor, trustee enforcer, protector or third party subject to any obligation or liability or deprived of any right, claim or interest, by reason that the laws of any jurisdiction prohibit or do not recognise the concept of a trust, or that the trust or disposition avoids or defeats or potentially avoids or defeats rights, claims, interests, obligations or liabilities, conferred or imposed by the law of any jurisdiction or any person by reason of a personal relationship to a settlor or any beneficiary. Thus any relationship governed by blood or marriage is covered (including present or former marriage and partnership).

The application of the provisions of CIT Law together with the provisions of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters of 1976, which has been ratified by Cyprus, makes it even clearer that property held under a trust has immunity from forced inheritance claims. Specifically, s 1 of the said Convention provides that the provisions of the Convention do not apply to decisions relating to the capacity of persons or questions of family law, including personal or financial rights and obligations between parents and children or between spouses and questions of succession. Accordingly, this means that any potential forced heirship claim for assets held under a trust cannot succeed.

## Laws enabling recognition and enforcement of foreign divorce court orders

### 7.72

Despite the fact that there are no specific laws that enable recognition and enforcement of foreign divorce court orders, it is nevertheless the case that a judgment issued by a court of a foreign country in relation to family matters can be enforced in Cyprus in two ways.

Firstly, judgments issued by a court of an EU member state can be recognised and enforced on the basis of EU Regulations. For example foreign court judgments relevant to matrimonial issues such as divorce and parental responsibility are enforceable through Council Regulation No 2201/03 (also known as Brussels IIa). Specifically, pursuant to Art 21(1) of the Council Regulation No 2201/03 judgments relating to divorce, legal separation or marriage annulment given in a member state are recognised in Cyprus without any special procedure being required unless one of the conditions set out in Art 22(a)–(g) applies, namely that the recognition will be inter alia manifestly contrary to the public policy of Cyprus or where the judgment was given in default of appearance or if the judgment sought to be enforced is irreconcilable with a judgment already issued in Cyprus between the same parties, if it is irreconcilable with an earlier judgment given in another member state or in a non-member state between the same parties. In addition,

foreign court judgments issued in relation to maintenance can be recognised and enforced based on the provisions of the Council Regulation No 4/2009 which governs maintenance obligations.

Secondly, pursuant to the provisions of The Decisions of Foreign Courts (Recognition, Registration and Enforcement) Law of 2000 (Law No 121(1)/2000) court judgments relevant to family matters issued by a non-EU member state can become enforceable in Cyprus if a bilateral agreement is in place between Cyprus and the issuing country for mutual recognition and enforcement of judicial decisions.

Even though the above legal framework is in place for recognition and enforcement of foreign divorce court orders, until now there are no reported cases dealing with the above matters.

## Reported cases in the Republic of Cyprus

### 7.73

Cyprus courts have not extensively dealt with any of the matters discussed above. However, what is clear from the case law is that Cyprus family courts have exclusive jurisdiction to adjudicate matters regarding the division of matrimonial property even when such property is held under a trust. The above principle has been established in the Supreme Court case of *Vounou v Vounou*<sup>154</sup> and it was later confirmed and applied in a number of judgments; however there are no reported cases touching the essence of the matter, namely if such parties can in fact receive property held under a trust.

<sup>154</sup> (1995) 1 CLR 168.

## Novel lines in attacking trusts in the context of divorce

### 7.74

As already mentioned, the current case law of the Cyprus courts does not shed sufficient light on when trusts may be attacked in the context of divorce. Nevertheless, the validity of a transfer of property into a CIT can always be challenged if it is proven that the relevant trust is a sham or in cases where the settlor retains actual control over the assets transferred into the trust fund and, therefore, when the settlor does not divest his/her interest thereon. In such a case, any transfer of property to the trustees may be challenged and cancelled. As the use of CITs is increasing, we expect to see more court cases in the near future.