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Unwrapping the Trust Protector

Definition of protector

The Cyprus International Trusts law (N.69(I)/1992) as amended from time to time, permits the appointment of a protector to a Cyprus International Trust ('CIT'). A protector is defined as "a person, other than the trustee, to whom powers of any nature have been granted via the trust deed or other document evidencing the trust, including power to advise the trustee in relation to the exercise of the trustee's powers or with regards to the right of the protector to consent or to veto the decisions of the trustee and also includes the power to appoint or remove (cancel) the appointment of the trustee".

Reasons for appointing a protector – the 'watchdog'

It is natural for settlors to wish to retain a degree of control over the administration of the trust's assets; the office of the trust protector responds to this intention.

5 top reasons to have a protector:

1. Increased peace of mind

A protector serves as the watchdog to the trustee to make sure he or she fulfils all required duties, stays abreast of any personal, family or business circumstances and provides suggestions to the trustee to change or update the trust and its administration as necessary;

2. Oversight and support for your trustee

A protector can observe the trustee to make sure that he or she carries out the duties accompanying the office of a trustee appropriately and with the trust's goals in mind. But a protector can also provide great support for a trustee as well. A protector can help the trustee notice and avoid potential pitfalls and make decisions in line with the goals of the trust. If it becomes necessary to remove a trustee, the trust document can give the protector the power to do so.

3. Easier resolution of disputes over time

A protector can also potentially resolve a wide range of disputes. For instance, it can be stated that the protector will act as mediator in disputes between co-trustees (if more than one trustee), between a trustee and a beneficiary, or between the beneficiaries. By giving a trust protector the “final say” in these disputes, expenses, hassle and uncertainty can be avoided.

4. Overseeing distributions

A protector can have power to approve (consent) or refuse a distribution to beneficiaries. This serves as an element of security to the settlor so that trustees do not disseminate the trust assets recklessly or unjustifiably.

5. Removing trustees when necessary and appointing new ones.

Trustees may be removed for mismanagement, or they may need to be replaced if they die or become incapacitated in some way.

Considering a professional protector appointment

When it comes to protectors, a settlor should consider the appointment of a professional protector as opposed to an ordinary individual confidant, friend, associate or family member.

An experienced and knowledgeable professional protector will be well placed to address complex trust issues and provide comfort for the settlor as well as acting as a valuable point of contact between the beneficiaries and the trustee. Indeed, where complex matters arise requiring protector involvement, it is of considerable benefit to the trustee if an experienced professional protector is in place.

5 top reasons to have a professional protector:

1. Risk

Trust structures can be very complex and accepting the role of protector may carry the risk of potential exposure and related liabilities where the role is not fully grasped.

2. Expertise

The trust as a whole will benefit from a team of highly skilled professionals with the requisite legal, financial and trust administration expertise for the successful application of the trust that has been established for the benefit of the beneficiaries.

3. Counsel

Professional protectors can work alongside other co-protectors, protector committees etc. as well as acting as third-party counsel to individual protectors who may not have expertise and resources in certain areas of trust administration. This enables a non-professional protector to fulfil obligations and mitigate against potential liabilities associated with the role.

4. Control

An independent professional protector can be valuable for a variety of planning and related taxation reasons, possibly reducing any unintended taxes or loss of certain related exemptions. Moreover, where a family member of the settlor or other 'connected person acts as a protector, unintended or unwanted compliance obligations may be triggered.

5. Continuity

A corporate professional protector ensures succession and continuation in the role of the protector following the death of the settlor or a natural person acting as a protector. This is particularly important for trusts with long perpetuity periods which will inevitably extend beyond the lifetime of any natural protector.

Typical powers of a protector

Protector powers may include the following as appropriate for the facts and/or in accordance with the terms of the relevant trust instrument:

- Removal and replacement of trustees;
- Termination of the trust;
- Veto of distributions;
- Change of situs of administration and governing law;
- Amendment of administrative provisions of a trust;
- Resolution of co-trustee deadlocks;
- Mediation of disputes between trustees and beneficiaries.

Despite the wide range of potential powers, it is important to ensure that the role and function of the protector do not deviate into the territory of 'de facto trustee'.

Closing comments

In summary, a protector can be an ideal and necessary addition to a trust to safeguard it from trustee misconduct. Like anything else involved in legal planning, there will usually be issues to navigate, but in the end, it will be worth it for the beneficiaries.

Services

- Establishment of a trust
- Legal drafting and reviewing of trust settlements, deeds and all ancillary trust documents
- Provision of trustee services
- Provision of protector services
- Day to day management and administration of trusts
- Legal advice on trust matters, inheritance and family planning
- Statutory reporting compliance

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