

CYPRUS TRUSTEES REGULATED

by Peter G. Economides

Cyprus, December 2012 - **Cyprus recently passed a much-awaited bill regulating trustees, company administrators and directors in a move expected to further boost the island's competitiveness in the business services arena.**

The Regulation of Fiduciary Service Providers Law 2012 was passed on 12 December, 2012 by the Cyprus House of Representatives as part of a broader set of legislative austerity measures aimed at contributing towards fiscal consolidation and at the same time, securing an EU bailout package.

After the recent passing of the Amendment to the International Trusts Law of 2012 this represents yet another landmark in the trust business in Cyprus.

The Law aims at regulating the management and administration of trusts in and from the Republic, including the provision of trustee and protector services, irrespective of where the trust is established. It also covers the management and administration of corporate entities, when such service is provided by Fiduciary Service Providers and provided that such entities are not already regulated and/or supervised by any Cyprus Authority, Institute or Association.

In this respect, members of the Cyprus Bar Association and the Institute of Certified Public Accountants of Cyprus (ICPAC) are exempted on the basis that they are regulated by their respective professional bodies.

The rest will be regulated by the Cyprus Securities and Exchange Commission (CySec), which is responsible for the monitoring of applications and the supervision of the licensed entities at all times to ensure compliance with the provisions of the Law. A relevant CySec Committee will maintain a publicly available online registry, confirming who is licensed pursuant to the provisions of the Law. The precise amount of dues and subscription fees will be determined by CySec in due course. A civil action will be brought against those who shall fail to meet the requirements or fail to pay the said fees but still continue to provide such services.

Pursuant to the provisions of the Law, the head offices of the licensee will need to be in the Republic without depriving the licensee of the right to have offices abroad. The individuals who run and manage the licensee will need to be 'fit and proper persons' with adequate vocational and academic qualifications so as to ensure the correct and prudent management of the licensee.

The management of the licensed entity will need to be run by at least two individuals whose qualifications and prudence should correspond with the above requirements. The employees of the licensed entity will need to be monitored carefully by their employer as pursuant to the Law, as it is the licensee that will be held accountable in the event of non-compliance.

The Law also provides for the mandatory appointment of a compliance officer, subject to the approval of the CySec Committee, while separate client accounts will need to be kept so as to preserve the clients' interests over their assets. Within four months from the end of each financial

year, audited Financial Statements will need to be readily available for inspection by the Committee.

Furthermore, great emphasis is provided concerning compliance with the Anti-Money Laundering Laws and Directives not only with respect to the provisions relating to the collection of Know Your Clients (KYC) documentation, but also with respect to the licensed entity itself and the individuals managing it.

Compliance with the provisions of the Law for the Prevention and Suppression of the Legalisation of Proceeds from Illegal Activities and the Directive OΔ144-2007-08 issued by CySec, is extended to those exempted from the provisions of this Law.

The Law provides that licensed persons who fail to comply with its provisions may suffer criminal liability and/or a civil fine of up to €1 million.

Equally importantly, to protect innocent third parties, the law provides that unless otherwise provided in any other law, breach or failure to comply with its provisions shall not affect the validity of any act or action of such licensed person that takes place in the course of the provision of such services.

The establishment of internationally endorsed criteria for administering fiduciary services will boost the island's competitiveness and further increase its influx of related business. The security it offers to clients and the guarantee that their interests will be protected by law, eliminate even the slightest reservations of doing business in Cyprus.