

Ε.Ε. Παρ. Ι(ΙΙΙ)
Αρ. 4229, 24.2.2017

Ν. 4(ΙΙΙ)/2017

Ο περί της Σύμβασης της Χάγης περί του Νόμου που Εφαρμόζεται σε Εμπιστεύματα και περί της Αναγνώρισης Αυτών (Κυρωτικός) Νόμος του 2017 εκδίδεται με δημοσίευση στην Επίσημη Εφημερίδα της Κυπριακής Δημοκρατίας σύμφωνα με το Άρθρο 52 του Συντάγματος.

Αριθμός 4(ΙΙΙ) του 2017

ΝΟΜΟΣ ΠΟΥ ΚΥΡΩΝΕΙ ΤΗ ΣΥΜΒΑΣΗ ΤΗΣ ΧΑΓΗΣ ΠΕΡΙ ΤΟΥ ΝΟΜΟΥ ΠΟΥ ΕΦΑΡΜΟΖΕΤΑΙ
ΣΕ ΕΜΠΙΣΤΕΥΜΑΤΑ ΚΑΙ ΠΕΡΙ ΤΗΣ ΑΝΑΓΝΩΡΙΣΗΣ ΑΥΤΩΝ

Η Βουλή των Αντιπροσώπων ψηφίζει ως ακολούθως:

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| Συνοπτικός τίτλος. | 1. Ο παρών Νόμος θα αναφέρεται ως ο περί της Σύμβασης της Χάγης περί του Νόμου που Εφαρμόζεται σε Εμπιστεύματα και περί της Αναγνώρισης Αυτών (Κυρωτικός) Νόμος του 2017. |
| Ερμηνεία. | 2. Στον παρόντα Νόμο, εκτός αν από το κείμενο προκύπτει διαφορετική ερμηνεία -

«Σύμβαση», σημαίνει τη Σύμβαση της Χάγης περί του Νόμου που εφαρμόζεται σε Εμπιστεύματα και περί της Αναγνώρισης Αυτών, η οποία υπογράφηκε από την Κυπριακή Δημοκρατία στις 11 Μαρτίου 1998 κατόπιν σχετικής Απόφασης του Υπουργικού Συμβουλίου με αριθμό 45.107 και ημερομηνία 14 Νοεμβρίου 1996. |
| Κύρωση της Σύμβασης. Πίνακας, Μέρος Ι, Μέρος ΙΙ. | 3. Με τον παρόντα Νόμο κυρώνεται η Σύμβαση, της οποίας το κείμενο στο αγγλικό πρωτότυπο εκτίθεται στο Μέρος Ι του Πίνακα και σε ελληνική μετάφραση στο Μέρος ΙΙ αυτού:

Νοείται ότι, σε περίπτωση αντίφασης μεταξύ του κειμένου του Μέρους Ι και εκείνου του Μέρους ΙΙ του Πίνακα, υπερισχύει το κείμενο που εκτίθεται στο Μέρος Ι αυτού. |

ΠΙΝΑΚΑΣ
(Άρθρο 3)

ΜΕΡΟΣ Ι
(Αγγλική γλώσσα)

**CONVENTION ON THE LAW APPLICABLE TO TRUSTS
AND ON THEIR RECOGNITION**
(Concluded July 1, 1985)

The States signatory to the present Convention,

Considering that the trust, as developed in courts of equity in common law jurisdictions and adopted with some modifications in other jurisdictions, is a unique legal institution,

Desiring to establish common provisions on the law applicable to trusts and to deal with the most important issues concerning the recognition of trusts,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

CHAPTER ONE - SCOPE

Article 1

This Convention specifies the law applicable to trusts and governs their recognition.

Article 2

For the purposes of this Convention, the term 'trust' refers to the legal relationships created – *inter vivos* or on death – by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.

A trust has the following characteristics:

- (a) the assets constitute a separate fund and are not a part of the trustee's own estate;
- (b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;
- (c) the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.

The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.

Article 3

The Convention applies only to trusts created voluntarily and evidenced in writing.

Article 4

The Convention does not apply to preliminary issues relating to the validity of wills or of other acts by virtue of which assets are transferred to the trustee.

Article 5

The Convention does not apply to the extent that the law specified by Chapter II does not provide for trusts or the category of trusts involved.

CHAPTER II – APPLICABLE LAW*Article 6*

A trust shall be governed by the law chosen by the settlor. The choice must be express or be implied in the terms of the instrument creating or the writing evidencing the trust, interpreted, if necessary, in the light of the circumstances of the case.

Where the law chosen under the previous paragraph does not provide for trusts or the category of trust involved, the choice shall not be effective and the law specified in Article 7 shall apply.

Article 7

Where no applicable law has been chosen, a trust shall be governed by the law with which it is most closely connected.

In ascertaining the law with which a trust is most closely connected reference shall be made in particular to:

- (a) the place of administration of the trust designated by the settlor;
- (b) the situs of the assets of the trust;
- (c) the place of residence or business of the trustee;
- (d) the objects of the trust and the places where they are to be fulfilled.

Article 8

The law specified by Article 6 or 7 shall govern the validity of the trust, its construction, its effects, and the administration of the trust.

In particular that law shall govern:

- (a) the appointment, resignation and removal of trustees, the capacity to act as a trustee, and the devolution of the office of trustee;
- (b) the rights and duties of trustees among themselves;
- (c) the right of trustees to delegate in whole or in part the discharge of their duties or the exercise of their powers;
- (d) the power of trustees to administer or to dispose of trust assets, to create security interests in the trust assets, or to acquire new assets;
- (e) the powers of investment of trustees;
- (f) restrictions upon the duration of the trust, and upon the power to accumulate the income of the trust;
- (g) the relationships between the trustees and the beneficiaries including the personal liability of the trustees to the beneficiaries;
- (h) the variation or termination of the trust;
- (i) the distribution of the trust assets;
- (j) the duty of trustees to account for their administration.

Article 9

In applying this Chapter a severable aspect of the trust, particularly matters of administration, may be governed by a different law.

Article 10

The law applicable to the validity of the trust shall determine whether that law or the law governing a severable aspect of the trust may be replaced by another law.