



## THE INTERNATIONAL FAMILY OFFICE

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IRREVOCABLE DISCRETIONARY TRUSTS & ASSET PROTECTION

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September 2016

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# Why Set up a Trust?

- ▶ Tax Deferral or Optimization;
- ▶ Succession Planning;
- ▶ Circumvention of Forced Heirship Rules;
- ▶ Bypassing Probate;
- ▶ Confidentiality;
- ▶ Asset Protection;
- ▶ Flexibility.



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# Trusts can provide effective Asset Protection (AP) if they are:

## 1. Properly Planned:

the settlor relinquishes control over and beneficial ownership of the property placed in the trust at a time when there are no existing nor foreseeable claims against the settlor;



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# **Trusts can provide effective Asset Protection (AP) if they are:**

## **2. Properly Administered:**

an experienced independent professional trustee is appointed (e.g. preferably with discretion to distribute assets to persons other than just the settlor);



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# Trusts can provide effective Asset Protection (AP) if they are:

## 3. Properly Implemented:

the trust is established in a reputable and appropriate Jurisdiction (e.g. outside the settlors home jurisdiction);

## 4. Properly Funded:

trust assets are physically placed in a jurisdiction distinct from the settlors home jurisdiction.



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The trust laws of the many trust jurisdictions currently existing vary greatly and are not all equal. Careful consideration is required to decide which jurisdiction has the most favourable AP laws, taking into consideration the following factors:

- The legal system

- The specific trust laws

- The tax laws

- The reputation

- political and economic stability



# WHO IS INTERESTED IN ATTACKING TRUSTS?



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## ATTACKS BY CREDITORS:

Judgements

Tax authority





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## FIRST LINE OF ATTACK- CHALLENGING THE VALIDITY OF THE TRUST

- The Trust is not valid so “it’s all his anyway” because the assets never left his patrimony - So the creditors can take it



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Attacks on Asset Protection trust structures come from a variety of potential claimants:

1. Third party creditors (contractual & tort judgment creditors);
2. Tax authorities;
3. Disgruntled beneficiaries/heirs;



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4. Feuding family members;

5. Divorcing spouse; and

6. Family spendthrifts.

all of whom would go to the court in the hope of setting the trust aside in order to access the trust fund.



Most, if not all settlors, typically want to maintain some degree of control over the trusts assets or distributions. Thus a basic tension is created between the settlors desire and the essence of a trust (separation of legal & beneficial ownership of assets)



The retention of Settlor powers has a direct inverse relationship to AP and need to be limited so as to not render the trust vulnerable to claims of the settlors creditors



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## For Asset Protection Properly Administered Trusts are Imperative !

The appointment of an experienced independent professional trustee is needed to ensure the Trustee and Directors are making **INFORMED DECISIONS** and not seen to be merely rubber stamping what Settlers are telling them.



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THANK YOU!

