



To protect and to preserve

ALAN TAYLOR CONSIDERS THE IMPORTANCE OF INCORPORATING APPROPRIATE ASSET PROTECTION IN WEALTH AND SUCCESSION PLANNING

➤ KEY POINTS

WHAT IS THE ISSUE?

Whatever the jurisdiction, a wealth management plan must incorporate the best tools and mechanisms to protect and preserve a client's wealth.

WHAT DOES IT MEAN FOR ME?

Failure to use appropriate asset protection in a wealth management plan may lead to professional advisors facing difficult questions from their clients.

WHAT CAN I TAKE AWAY?

The Cook Islands' focus on asset protection can assist professional advisors in achieving maximum protection for a client's assets, while providing a platform for the other objectives in the wealth management plan to succeed.

THE FOCUS OF high- and ultra-high-net-worth individuals (U/HNWIs) is, generally, to create wealth through their businesses and investments. The long-term management of that wealth is often an afterthought. As they become wealthier and older – and usually following some personal, family or business crisis – their focus turns to making sure that wealth passes to the next generations in a structured, organised and planned manner. Succession planning is often, therefore, given as the primary motivation when a U/HNWI discusses a wealth management plan with their professional advisors.

Though it is essential that planning provides for the transfer of assets as the U/HNWI intends, both during and after their lifetime, it is clearly crucial that there are assets to transfer in the first place. As such, it is imperative that professional advisors incorporate into a client's wealth management plan the best tools and mechanisms to preserve and protect that wealth. If they do not, they may face some uncomfortable questions following the next client crisis. What is the point of a succession plan if there are no assets to be passed on?

Assets can be dissipated through poor investments, squandered by reckless

behaviour, taken by political force, attacked by vexatious litigants, or lost due to inappropriate planning.

There are various strategies and methods that can be used to protect and preserve wealth and counter such scenarios, including:

- choosing the appropriate asset holding and investment vehicle(s);
- structuring to separate personal and family assets from business assets in order to insulate both from the liabilities of the other;
- ensuring assets are out of the reach of rogue children, and the spouses and families of children;
- choosing appropriate and robust laws; and
- having qualified, experienced professionals administer and manage assets – they must be up to speed with local and international requirements for exchange of information, and have systems in place to enable them to comply, as wealth may be put at risk if compliance obligations are not met.

Professional advisors must determine which strategies and methods best serve the needs of their clients, and which jurisdiction(s) can best meet those needs from a wealth protection perspective.





40+



awards

and we still strive
for a higher level
of excellence

We believe in partnerships built on trust and this is evident in our award-winning work with our clients and partners.

For further information on Equiom's services in Asia please email: asia@equiomgroup.com

Trust | Tax | Corporate Services
Hong Kong | Singapore | Japan



equiomgroup.com/asia

Equiom

A partnership built on trust

Equiom (Guernsey) Limited is licensed by the Guernsey Financial Services Commission. Equiom Trust Services (BVI) Limited is regulated by the British Virgin Islands Financial Services Commission. Equiom (Isle of Man) Limited is licensed by the Isle of Man Financial Services Authority. Equiom (Jersey) Limited is regulated by the Jersey Financial Services Commission. Equiom (Luxembourg) S.A is licensed by the Luxembourg Financial Authority 'Commission de Surveillance du Secteur Financier' (CSSF). Equiom (Malta) Limited is authorised to act as a trustee and fiduciary services provider by the Malta Financial Services Authority. Equiom Trust Services Pte. Ltd. is licensed by The Monetary Authority of Singapore. Virtus Trust Limited is regulated by the Guernsey Financial Services Commission.

NEGATIVE CONNOTATIONS AND MISCONCEPTIONS

The term 'asset protection' has gained a reputation over the years, particularly in onshore jurisdictions, as being synonymous with hiding assets offshore and removing access from those who are rightfully entitled. There is a perception, in some circles, that there is something morally or ethically wrong with asset protection.

It is acknowledged that the laws of jurisdictions that have emphasised asset protection planning generally have the effect of making it more difficult for creditors to access assets. The issue is where to draw the line between the rights of property owners and the rights of creditors. Where one thinks that line should be drawn will very much depend on individual circumstances. Both onshore and offshore jurisdictions have addressed these issues through legislation, with many different conclusions as to where the line should be drawn.

THE USE OF TRUSTS IN WEALTH MANAGEMENT

In common-law jurisdictions, the trust is the most commonly used vehicle in a wealth management plan. This is primarily due to the fact that asset protection is inherent in all trusts. The settlor has the ability to remove assets from their estate, transfer legal and beneficial ownership to different parties, and have those assets managed and controlled by someone else again. Those assets are, therefore, no longer available to the settlor's creditors. This is asset protection in its purest form, and has been available through the use of trusts for hundreds of years. That being the case, the issue is not whether there is asset protection, but the quality of that protection and the attention given to it in planning to preserve and protect wealth.

THE COOK ISLANDS AND ASSET PROTECTION

The Cook Islands established itself as an international finance centre in the early 1980s with the enactment of the *International Companies Act 1981-82* and the *International Trusts Act 1984 (ITA)*. Since that time, through amendments to those statutes and subsequent legislation, the Cook Islands has developed a robust asset protection framework. The jurisdiction's focus on protecting wealth has developed in response to society's need, and right, to have wealth protected from those

who attempt to take it by force, litigation or legislation – whether through illegal, unethical or immoral means.

Provisions in the ITA aimed specifically at strengthening the asset protection provided by a trust include:

- giving certainty to the rights of those who might claim against trust assets by reference to specific dates and events;
- repeal of the *Statute of 13 Elizabeth*;¹
- forced-heirship rules in foreign jurisdictions not affecting the validity of a trust or transfers onto trusts;
- non-recognition or non-enforcement of foreign judgments if they are inconsistent with Cook Islands law; and
- permitting dynastic trusts with no fixed termination date.

THE RISK OF ABUSE

No jurisdiction, onshore or offshore, is immune from abuse. The Cook Islands has enacted strict laws to combat money laundering and other financial crimes, and is complying with its international obligations in relation to anti-money laundering and countering the financing of terrorism, and transparency and the exchange of financial information to combat tax evasion. It actively works with international organisations such as the OECD, the Financial Action Task Force and the EU.

On the establishment of a trust, thorough due diligence is undertaken on a settlor and the assets to be transferred to a trust, as well as the settlor's ability to remain solvent on the transfer of assets and thereafter.

WHAT WEALTH PROTECTION PLANNING DOES NOT DO

When professional advisors explain to their clients what a wealth management plan can do, and in particular the wealth protection aspects, they must also clearly explain what it will not do. For example, a Cook Islands international trust, together with any other Cook Islands structures, used for wealth protection purposes:

- Does not operate to defraud existing and known creditors. Trusts must be established at the right time and for the right reasons. If not, then the assets of a trust may well be available to creditors.
- Does not depend on secrecy for its effectiveness. Though there are comprehensive confidentiality provisions in Cook Islands law, proper planning proceeds on the basis that those who contribute assets to a trust can, if necessary, disclose the whole



structure without compromising its effectiveness.

- Does not offer tax planning advantages that are otherwise unavailable. A Cook Islands international trust should be regarded as a tax-neutral vehicle.
- Does not enable a person to protect assets to which they did not have proper title in the first place. Cook Islands law will not validate the transfer of property to a Cook Islands international trust that is not owned by the settlor.

Cook Islands trustee companies are licensed and regulated by the Cook Islands Financial Supervisory Commission, and are subject to regulatory oversight to ensure the jurisdiction is not used by those seeking to harbour the proceeds of crime, or commit fraud or other financial crimes. To ensure maximum protection under the laws of the Cook Islands, a trust must be established at the right time and for the right reasons.

CONCLUSION

The protection of assets is an essential part of a wealth management plan, and professional advisors owe it to their clients to consider all options in this regard, the Cook Islands being one. When those advisors are creating such plans with an open mind and in the best interests of their clients, they must ensure that a client's intentions for passing assets to the next generations have the best possible chance of being fulfilled.

¹ More formally, the *Fraudulent Conveyances Act 1571*, which laid the foundations for fraudulent transactions to be unwound when a person became insolvent or bankrupt



ALAN TAYLOR IS MARKETING DIRECTOR AT THE COOK ISLANDS FINANCIAL SERVICES DEVELOPMENT AUTHORITY