

Asset protection trusts: Trends, best practices and emerging challenges

By Edward V. Marshall and Henry Brandts-Giesen



This paper is the third in our series on trusts and wealth protection. In our earlier publications—The rationale, benefits, and important considerations involved in cross-border wealth structuring and A basic guide to selecting a trust jurisdiction — we explored why trusts remain a cornerstone of wealth structuring and the critical factors in choosing where to establish them.

In this edition, we focus specifically on asset protection trusts, examining their role, benefits, common misconceptions, and how evolving regulation and case law continue to shape their use. The aim is to provide private clients and their advisers with a practical guide to structuring and maintaining effective protection in a rapidly changing environment without creating potential issues such as fraudulent conveyances.

Understanding asset protection trusts

An asset protection trust (APT) is an irrevocable trust designed primarily to shield assets from future claims by creditors, litigants, or other claimants. Unlike conventional discretionary family trusts, which are often used for succession or tax planning, APTs have an explicit protective purpose.

Properly established, an APT achieves its objectives through:

- **Separation of ownership and benefits:** the legal title is transferred to independent trustees, creating a clear distinction between the settlor and the trust fund.
- **Discretionary benefits:** no beneficiary has a fixed entitlement that creditors can readily attach.
- **Restrictive powers:** the settlor does not retain extensive powers to terminate, change, or control the trust, reducing the risk that courts will characterise the arrangement as illusory.

As we discussed in [The rationale, benefits, and important considerations involved in cross-border wealth structuring](#), the effectiveness of an APT depends not only on technical documentation but also on the integrity of the planning process, the conduct of trustees, and the factual context in which the trust is formed and operates.

Selecting the right jurisdiction

Jurisdiction selection is perhaps the single most critical factor in APT design. Each jurisdiction offers different combinations of protective legislation, trustee expertise, and tax treatment.

Some of the more frequently used jurisdictions include:

- The Cook Islands, which pioneered APT legislation and offers strong statutory barriers against the collection of foreign judgments, short limitation periods for creditor claims, excellent trustee resources, and robust confidentiality rules. The Cook Islands International Trusts Act is often cited as a benchmark for firewall protections.
- Nevis, where the Nevis International Exempt Trust Ordinance requires claimants to post a substantial bond before bringing any action and limits fraudulent transfer claims to short timeframes. Also, the gold standard for the formation of foreign limited liability companies.
- Liechtenstein, combining the advantages of civil law foundations with trust concepts, and offers substantial confidentiality and creditor-resistant features. This hybrid model of including corporate directors and trust beneficiaries gives you the best of both entities.
- The Cayman Islands, known for a sophisticated banking and trust industry and flexible drafting options, although recent regulatory initiatives have increased disclosure requirements.
- The Isle of Man, which offers a well-regarded trust regime, including specific asset protection provisions, a robust professional trustee sector, and clear statutory guidance on trustee duties and creditor challenges. Its “firewall” legislation protects trusts from foreign claims in many circumstances.
- The Bahamas, where the Bahamas Trustee Act and the Purpose Trust Act provide modern asset protection options and strong privacy protections. The jurisdiction has invested heavily in professional infrastructure and regulatory standards to reassure international clients.
- Jersey and Guernsey, which are frequently chosen for their mature trustee industries, deep expertise, and high-quality courts. Although less aggressively protective than the Cook Islands or Nevis, they combine credibility with relative certainty.
- Singapore, increasingly popular due to its stable regulatory environment, professional trustee services, and modern trust legislation, including the Trust Companies Act and provisions for reserved powers. Although Singapore does not have firewall laws as robust as the Cook Islands, it offers a high level of credibility and sophisticated courts that support trust arrangements, making it attractive to clients in Australia, Asia, and beyond.

- Hong Kong, which also offers a well-developed trust regime under the Trustee Ordinance and is widely used by families with assets or connections in Greater China. While Hong Kong does not provide specific asset protection trust legislation, its common law foundations and access to professional trustee companies make it a reputable option. Political considerations and recent legal developments, however, mean some clients have shifted their preference to Singapore or other offshore jurisdictions.
- Mauritius, a civil law jurisdiction increasingly positioning itself as a hub for private wealth structuring, particularly for clients investing in Africa and India. The Mauritius Trusts Act includes creditor protection provisions, and the jurisdiction offers tax incentives and a bilingual legal system combining civil and common law principles.
- The British Virgin Islands (BVI), known for its flexibility and efficient trust establishment. While the BVI does not have an explicit APT statute equivalent to the Cook Islands or Nevis, it has modern trust legislation, including VISTA (Virgin Islands Special Trusts Act), which allows settlors to retain control over companies without compromising the trust's validity. The BVI's strong professional infrastructure and established financial services sector have made it a popular choice for holding company shares and investment assets, as well as a prime location for yacht registration
- US Domestic APT states such as South Dakota, Tennessee, Nevada, Alaska, and Delaware provide clear statutory frameworks within the US legal system. These jurisdictions are attractive for US-domiciled clients but have limits on recognition in other states and internationally.

Additional jurisdictions sometimes considered include:

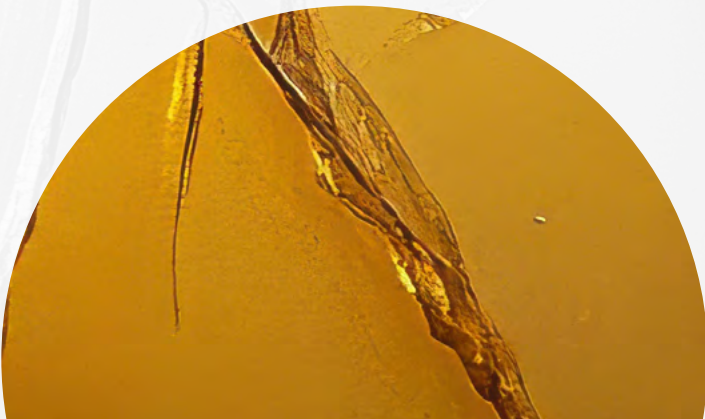
- Switzerland, which recognises trusts under the Hague Convention and offers high-quality professional administration. Swiss professionals often administer trusts governed by other laws (like Jersey or Cayman), and some clients like the perception of Swiss stability and neutrality;
- Panama, historically popular for its trust and foundation law and confidentiality provisions;
- Gibraltar, with a UK-style regime and established trust law;
- Dubai International Financial Centre (DIFC), which has enacted modern trust legislation attractive to clients in the Middle East; and
- New Zealand, where trusts have been widely used for wealth planning, but nowadays their suitability is more limited.

Each of these options presents unique combinations of legal frameworks, tax treatment, and reputational considerations that must be carefully assessed.

No jurisdiction is immune to challenge. Even where the statutory law is highly protective, courts in the settlor's home country may exercise personal jurisdiction over the settlor, requiring them to repatriate assets or otherwise comply with judgments or face potential jail time.

A common error is assuming that moving assets offshore automatically guarantees protection. In reality, jurisdiction selection must be evaluated in tandem with enforceability risk, reputational considerations, and tax consequences. Determining if creditors are potential or future is critical as well.

For example, clients often underestimate the impact of evolving anti-money laundering regimes and transparency initiatives, such as the Common Reporting Standard or beneficial ownership registers. A jurisdiction perceived as highly secretive in the past may today face significant international scrutiny, potentially undermining the strategic objectives of the trust. Attempting to hide assets is simply a thing of the past as the Panama Papers clearly point out.



Recent developments and trends

Asset protection planning has evolved significantly over the past decade. Regulatory and judicial trends increasingly favour transparency and creditor rights over secrecy and insulation.

Key developments include:

- **Transparency measures:** The introduction of public beneficial ownership registers in many jurisdictions has removed much of the anonymity previously associated with offshore structures.
- **Stronger anti-avoidance laws:** Many jurisdictions have strengthened their fraudulent transfer statutes. For example, the UK Insolvency Act and the US Uniform Voidable Transactions Act have expanded the scope of clawback claims.
- **Judicial willingness to disregard formalities:** Courts increasingly look to the substance of arrangements rather than their form, especially where trusts are funded at a time when liabilities are foreseeable.
- **Heightened compliance expectations:** Trustees are now expected to demonstrate rigorous due diligence, active control over trust assets, clear records, and proactive compliance with tax and regulatory reporting.
- **Greater scrutiny of professional advisers:** Advisers who facilitate asset protection strategies are themselves under more intense regulatory and reputational pressure. This has led to more conservative structuring and documentation standards due to the possibility of personal liability

These developments do not mean asset protection is no longer achievable. Rather, they underline the need for structures that are proportionate, properly documented, and defensible if challenged. Increasingly, clients must expect transparency and be prepared to explain the legitimate purpose of their structures.



Common pitfalls and how to avoid them

While APTs can be highly effective, they are not immune to challenge. Many structures fail because of avoidable errors.

Frequent pitfalls include:

- **Retaining excessive control:** A common mistake is allowing the settlor to act as trustee or to hold broad powers of appointment, revocation, or investment direction. This undermines the separation essential to effective protection. Courts in New Zealand, Australia, the US, and the UK have consistently ruled that retained control can render a trust a sham or a mere nominee arrangement.
- **Poor timing of transfers:** Transferring significant assets into a trust when a claim is foreseeable creates a presumption of intent to defraud. Courts will scrutinise the context closely, and claimants may have extended limitation periods to bring clawback actions.
- **Improper trustee behaviour:** Trustees who habitually follow instructions from the settlor, fail to exercise independent judgment, or act inconsistently with the trust deed jeopardise the trust's credibility.
- **Failure to maintain records:** Comprehensive records of trust decisions, distributions, and communications are essential. Absent records, courts may infer improper purpose or control.
- **Neglecting tax planning:** In cross-border situations, ignoring the tax implications of funding and operating a trust can trigger unintended liabilities, including exit taxes, deemed distributions, or punitive anti-avoidance penalties.

To avoid these pitfalls, it is essential to engage professional trustees, document every decision, and adopt a culture of transparency and discipline in trust management.

Ethical considerations

Asset protection planning has always involved a delicate balance between legitimate risk management and potential creditor frustration. Today, that balance is under more scrutiny than ever.

Clients and advisers must weigh:

- Whether the strategy serves a reasonable purpose (such as insulating family assets from business liabilities or serving families in multiple jurisdictions) rather than simply frustrating legitimate claims.
- Whether the trust design respects the rights of family members, business partners, and other stakeholders.
- Whether the plan is proportionate to the risks faced and transparent to regulators if challenged. Again, transparency has to be assumed as a given these days.
- A defensive approach based solely on opacity is increasingly risky, both legally and reputationally. Ethical asset protection is about resilience, not evasion.



Practical recommendations

Drawing on our experience across multiple jurisdictions, we suggest the following practical recommendations:

- **Start early:** The most effective asset protection structures are established long before any claim arises.
- **Be realistic:** Recognise that no structure offers absolute immunity. The goal is to deter frivolous claims and create negotiating leverage.
- **Limit retained powers:** Avoid broad powers of termination, modification, or appointment, or subject them to the consent of an independent protector.
- **Select professional trustees:** Appoint trustees who have no personal ties to the settlor and who understand their fiduciary duties.
- **Document intent clearly:** Keep clear records demonstrating that the purpose of the trust is legitimate risk management and estate planning.
- **Integrate with tax planning:** Ensure the structure aligns with tax obligations in all relevant jurisdictions.
- **Review and stress-test:** Conduct periodic reviews to ensure the trust remains compliant and fit for purpose, and that any changes in the law are addressed.
- **Maintain transparency:** Be prepared to demonstrate compliance with reporting obligations.
- **Educate family members:** Ensure beneficiaries understand the trust's purpose and their rights(or lack thereof).
- **Plan for enforcement risks:** Understand how courts in the home jurisdiction are likely to view offshore structures.

Stress-testing and governance

Trusts are dynamic, not static. As laws, family circumstances, and economic conditions change, trusts should be re-evaluated.

Regular stress-testing should consider:

- The effectiveness of the governing law in light of new regulations.
- The independence and capability of trustees.
- The quality of documentation supporting trust decisions.
- The impact of relationship breakdowns, succession events, and creditor claims.
- The enforceability of protections if litigation arises in a hostile jurisdiction.
- Regular reviews improve resilience and reduce the risk of unanticipated vulnerabilities.



Conclusion

Asset protection trusts remain a valuable tool for families seeking to safeguard wealth across generations. Yet the global environment—characterised by transparency, regulatory scrutiny, judicial activism, and shifting expectations—demands thoughtful design and robust governance.

Asset protection is no longer about secrecy. It is about creating structures that are resilient, defensible, and integrated into a broader wealth plan.

This is a customized design-led process, not a template exercise. It requires strategic advice, rigorous documentation, and ongoing review.

To explore how an asset protection trust could support your objectives, please connect with us:



Edward V. Marshall

Global Head of Family Office
and High Net Worth

D +1 212 768 6825

edward.marshall@dentons.com



Henry Brandts-Giesen

Partner, Global Co-Chair,
Family Office and High Net Worth

D +64 93 75 1109

henry.giesen@dentons.com

Dentons Global Family Office and High Net Worth

ABOUT DENTONS

Redefining possibilities. *Together, everywhere.* For more information visit **[dentons.com](https://www.dentons.com)**

© 2025 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Please see [dentons.com](https://www.dentons.com) for Legal Notices.