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FOREIGN FUND MANAGEMENT AND DIVERSIFICATION

Most asset protection trusts continue to hold all their assets within the US. The asset protection strategy at first level is that if a threat develops, knowledge of the existence of the asset protection trust will of itself deter litigation and bring early settlement. At second level, if the plaintiff persists, the foreign trustee can remove the domestic trustees, liquidate any vulnerable assets, and re-invest the resulting funds outside of the US. This re-investment should be with a foreign financial institution having a minimal presence in the US, to avoid any attempts by US courts to attack the account.

The above strategy remains valid for many of our clients, and most importantly, it is one they are personally comfortable with. However, we also see changes taking place in international banking (particularly since 9/11) as well as in the direction and style of litigation brought by plaintiffs.

For some clients it may be prudent to establish foreign investment relationships at an earlier stage. One concern is that when a definite threat has emerged, all of the parties involved in the trust must examine their own circumstances much more carefully before acting to liquidate or move trust assets. For example, the trustee may find it difficult to find expert advisors, (including legal counsel) willing to assist with the liquidation of trust assets once litigation issues against the settlor. The valid concern of all involved is that if they assist with the liquidation and movement of trust assets offshore at such a sensitive time, then they themselves may face court action as a "party to a conspiracy to defraud".

Another consideration is the changing global banking environment. In the past it was a simple and fast process to open an offshore bank account. Since the clampdown on terrorist financing and money laundering after 9/11, all banks are carrying out much stricter due diligence. This slows down the whole process and it can now take 2-3 months to open a new account with a Swiss bank for example. This delay can leave the foreign trustee unable to move liquid assets which are left sitting in the US far longer than they are comfortable with. Prudent clients will already have established a relationship with an offshore financial institution before a threat develops. Private Swiss

investment banks are preferred but they have some disadvantages (for example they may not offer the same range of services as larger banks and may charge higher fees than most US financial institutions).

Some clients prefer a larger international bank with additional services, or perhaps with some onshore US presence, for easy access, even if it has some exposure to US courts. Part of the trust assets can be placed with the foreign financial institution (individual banks have account opening minimums with most Swiss accounts requiring a minimum of \$250,000-\$500,000), while the remainder are retained onshore US. The principal advantage of this is that if and when the time comes to move more assets offshore, the account is already open, both the client and fund manager are familiar with each other, and the foreign trustee can quickly move the assets out of the US into the foreign account.

A foreign investment account (particularly one under Swiss management) can also provide good diversification for the trust portfolio. While Swiss fund managers usually invest heavily in US dollar based assets, they also often include a percentage of non-US based assets. Furthermore, they are trained in a different investment environment and have a different investment approach than many US fund managers.

What does the above mean to you? Firstly, it is important that you familiarize yourself with foreign banking and fund management services. If you would like information on where to start, then contact us and we will direct you to the appropriate persons. If you would like the trustee to proceed with opening an account, then you should speak to us about your preferred choice. Just as important however, is that if there is a threat of litigation to the trust, you inform Cook Islands Trust Corporation Ltd as early as possible. Do not leave it too late as if you do we may not be able to assist you just when you need us the most!