



ASSET PROTECTION

G is a UK resident, ordinarily resident and domiciled individual. He is 60 years of age and has 3 children. G currently owns 75% of the shares in XYZ Systems Limited, valued at approximately £600,000. In addition, G owns other assets in joint names with his spouse (including his principal private residence).

G wishes to consider the use of offshore trusts to ensure:

- 1** The succession of the funds from the sale of his shares in XYZ through the family.
- 2** The maximum flexibility for tax planning.
- 3** The protection of the family estate from unforeseeable creditors.

A trust is a legal agreement whereby an owner of assets (the settlor or donor) transfers legal ownership to trustees who will hold them for the benefit of other people known as the beneficiaries. The interests of the beneficiaries are equitable and are only recognised by courts which adopt the principles of the English courts of equity or which have specifically adopted the concept of equitable interests. G may create a trust and transfer his assets to the trust.

The Trust Deed itself will be prepared in accordance with G's wishes to ensure flexibility of planning in the future, whilst allowing G to enjoy access to the capital and income. The trust will be transparent for tax purposes and its creation will need to be reported to the UK Inland Revenue.

Trusts, unlike 'wills', cannot usually be contested; therefore, G can be sure that the beneficiaries of the trust (which may include G) will benefit in the proportion of the trust assets that are intended.

Tax saving is still, perhaps unfairly, the immediate motive assigned to anybody who becomes involved with a trust. It cannot be denied, however, that substantial tax saving opportunities still exist in many jurisdictions and situations, particularly in respect to inheritance taxes and capital gains taxes. The use of a trust can enable people changing their country of residence to become a newborn taxpayer in the most advantageous circumstances.

With regards to objective 3, the Isle of Man has, quite properly, steered clear of introducing an "asset protection" or "creditor protection" statute. However, the Isle of Man is one of the maturest jurisdictions in Europe with a legislative tradition stretching back over a thousand years. Hence, even though there is not asset protection legislation as such in the Isle of Man, the position of the creditors is well established under Manx law.

The English statute of Elizabeth does not apply and reference must be made to the Fraudulent Assignments Act 1736 ("FFA") and the decisions made under it. FFA provides that "all fraudulent assignments or transfers of the debtors, goods or effects shall be void and of no effect against his just creditors, any custom or practice to the contrary notwithstanding."

Recent cases before the Manx courts have given judicial guidelines to practitioners, mainly:

- a** Each case depends upon its own circumstances;
- b** It is a question of fact whether a transaction was bona fide or was a contrivance to defraud creditors;
- c** A Trust Deed is void against creditors when the debtor is in a state of insolvency or when the effect of the Deed is to leave the debtor without means of paying his present debts (whether or not consideration was given).

Hence, if G were to make a settlement when insolvent, that settlement must be void, not only in respect of existing creditors but also of any subsequent creditors.

A state of insolvency implies an inability to pay existing or present debts. A person is not in a state of insolvency merely because he may not be able to pay contingent or future debts, which may never materialise. It seems that Manx courts would construe the term "present debts" to include known and ascertain debts which are to fall due on a date in the future.

A transaction or contrivance designed to deprive known and ascertainable future creditors to property which would otherwise be applicable for their benefit would not be honest in the context of the relationship of debtor and creditor and would not therefore be bona fide.

Thus, trusts set up with the above objectives will successfully protect the assets transferred to the trustees from future unascertainable creditors.

Contact us

Please contact us for further information on any of the above - we would be pleased to deal with your questions quickly, and of course, in the strictest confidence.

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