ASSET PROTECTION

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PROTECTING YOUR ASSETS

Protecting your personal assets is arguably as important as acquiring them in the first place. All your hard work can be quickly undone.
It is important to have effective asset protection strategies in place before something goes wrong.

The key to asset protection lies in the separation of liabilities: personal liability, different business ventures, real estate, pension or 'rainy-day-funds' should all be separated.

Depending on your needs, additional layers of protection can be added to protect your interests. For example, you can protect your company from the risks of a former sole proprietorship or general partnership by setting up a Trust. Your estate can be protected from claims using a Foundation, intellectual property can be managed by an offshore IP holding company and so on.

There are a range of strategies you can use to protect your personal assets and it is best to work with a trusted adviser to ensure the strategies are tailored to your circumstances and are legally effective. Here we take a high-level walk through some typical strategies.

Real Estate

- The settlor can transfer his property to a family member
- At the same time have a prohibition of sale and encumbrance and a life-long personal right of residence recorded in the land register.
- These rights cannot be seized by third parties as such, since a personal right of residence can only be exercised by the very person.
- It prevents any further seizure or sale of the property by the owner until the death of the entitled person

Insurance

- The owner transfers assets , usually securities and also bank account to a renown life insurance company.

- The life insurance is then paid out either to children or to a trust or to a foundation at a certain time. The insurance company can either manage the assets itself or, more often, the settlor himself will provide a manager who handles his asset. Here is however caution at the place: if this manager provided by the settlor has direct influence on these assets. This could lead to the fact that the settlor could be regarded as beneficiary and not the insurance.

Trusts and Estate Planning

The trust dates back to medieval times when the knights went on crusade they transfer their properties to a good friend the obligation to retransfer the asset if they should return alive. The friend was the real owner of the assets during the time of the knight's absence

The settlor does not directly own assets contributed to the trust. And if there is no evidence of ownership, such assets are protected against third parties..

Thus, an asset protection trust provides more flexibility and confidentiality than a will, allowing you to retain control over assets and confidence in their inheritance by specified persons in the event of death or incapacity. Trust assets are exempt from local taxes.

Warning: In most cases, trustees are not willing to declare themselves as UB

The classic asset protection trust model assumes the presence of three subjects: the settlor or founder, the trustee and the beneficiary

Trust are offered in most common law jurisdiction .

Even though the UAE recognized civil law the 2 mains financial free zone are governed by common law namely the DIFC and the ADGM both are offering a reliable legal background to establish trusts. Further the Singapore trust is unique in it requirement of confidentiality , strict rules for the trustee and compliance. Singapore has an excellent reputation worldwide and a Singapore trust is almost impenetrable for any third parties.

Offshore Company

Be aware that offshore company are risky in many way. We don't recommend the classic offshore jurisdiction like BVI, Channel Island, Panama, Aruba , Gibraltar, Seychelles etc. The main advantage of UAE offshore company is the implementation of the ESR (economic substance regulations)

Advantages:

- zero tax rate,
- privacy and confidentiality,
- absence of financial reporting,
- low set up and maintenance costs ,
- no limitations on withdrawal of capital or profit
- flexible share transfer etc.
- convertible bonds can be issued

An offshore company can hold assets like bank accounts, real estate, securities, cars.

Assets protection through the DIFC Wills

The DIFC Wills Service Centre allows non-Muslim expatriates to create Wills under similar laws to the jurisdiction of England and Wales and provides for testamentary freedom rather than the forced heirship regime under Sharia law.

As long as you are over 21 years, are not a Muslim, and have assets in the UAE, you can register a DIFC Will.

You will need a DIFC registered Wills draftsman to create your Will.

In the event of succession and pursuant to a will filed with the DIFC Wills and Probate Registry, the DIFC Court will issue grants and court orders to be directly enforceable within the DIFC as well as the Emirate of Dubai, without the need to approach the Dubai Courts.

The DIFC will can also include assets outside the UAE.

Assets protection through Family Office

In 2008, the regulator extended the DIFC`s rule-set to include the Single Family Office regulations with the objective to allow for Single Family Offices efficiently manage their family-run institutions, private wealth, as well as succession and tax planning from within the centre.

As per the framework`s definition, the DIFC Single Family Office is as a corporation or partnership that is established within the DIFC, offering services exclusively to a single family.

A DIFC-domiciled SFO can be established in several legal forms, inter alia a company limited by shares or a limited liability partnership. As per the regulations, the inward-oriented SFO is restricted to provide services exclusively to

- family members of a single family (individuals),
- family fiduciary structures,
- family entities, as well as
- family businesses.

The family must prove a minimum of 10m USD in liquid/investable assets and furnish evidence about the family relation of the individuals.

Although the DIFC initially was completely shielded from the onshore (UAE) economy, latest policy amendments passed in May 2017 now allow DIFC-based entities to hold properties and conduct business onshore

Foundations

Foundations are the counterpart from the civil law area to the trust in common law. Foundations are assets that have their own legal personality. This is the essential difference to the trust. In the trust, a trustee, i.e. a physical person, is appointed and the trust itself is not a legal entity in its own right but a contract between the settlor and the trusty. in the foundation, the settlor is the one who contributes the assets and grants them their own legal personality. the settlor can either reserve the right to revoke the foundation, which makes the foundation vulnerable to outsiders since this right of revocation is attachable and executable. Only the irrevocable foundation would be a protection against attacks from outside. such foundations are offered in the whole civil law area, the best known are the foundations in Switzerland and Liechtenstein but also in other continental European countries.

In the UAE Ras Al Khaimah International Corporate Centre (RAK ICC) has announced the launch of its Foundation regime earlier last year.

The RAK ICC Foundation Regime is the result of global benchmarking.

Crypto assets

Providers who wish to offer crypto assets (or any related services) must be incorporated onshore within the UAE or within one of the UAE's financial free zones (i.e. the Dubai International Financial Centre or the Abu Dhabi Global Market).

The Securities and Commodities Authority (SCA)'s Decision created two classes of people to whom crypto assets may be offered to:

a) Qualified Investors; and

b) b) other people who do not meet the eligibility criteria as a Qualified Investor.

Example of a Bitcoin – hedge - swap

(as offered by a professional financial consultant)

- Convert funds into Bitcoin and immediately hedge the value of the Bitcoin against USD, EUR or any hard currency to generate income on top of it and offer a swap into the local currency of the investor.

- Around 4% yearly interest rate in USD with immediate liquidity and the risk of investment is low because the counterparty in the hedge has a minimum of 150% collateral pledged with the custodian.

- Bitcoin is good because it cannot be seized by any government and the hedge+swap that the client receives has a net present value constant in his local currency, so there is no currency exchange gain for what the client will have to pay taxes until he closes the hedge and executes the swap of Bitcoin back into the hard currency he wants.

While designing the proper hedges, Bitcoin came as a much better solution than any FX instrument or any other commodity held with a custodian,

because :

a) it has no physical body, it is easy to transport and transfer and the country borders do not affect at all,
b) the Bitcoin trading market is already big and liquid, and
c) the client can keep and custody his own assets and the custodian only will keep the required financial collateral (called "margin") to assemble and operate the hedge and swap.

„Anonymous“ Bank Accounts

The numbered accounts and the bank secrets are only a pile of broken pieces and the leakers deliver data carriers to the tax authorities.
The actual power of foreign governments has shown in the Credit Suisse vs US Inland revenue case how little banking secrets are worth.

After all, countries like Switzerland, Liechtenstein, Cyprus, etc. are also parties to the common reporting standard and for this reason alone, account movements are already reported to the financial authorities of the home country.

To handle this Issue we have provided solutions in our ” Second Residence” webinar.

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