



501 W. Broadway, Suite 800, San Diego, CA 92101

(619) 400-4942 Tel • (619) 400-4952 Fax

www.kehrlaw.com

A CLIENT'S GUIDE TO AN INTERNATIONAL ASSET PROTECTION TRUST

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dan@kehrlaw.com

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I. Introduction to an International Asset Protection Trusts

An International Asset Protection Trust is a long task to complete and requires significant amounts of attorney effort and client participation; however, the long-term benefits result in a great payoff. Client participation and cooperation is heavily requested throughout the process to ensure the client's financial needs and trust needs are all handled with the utmost care.

An International Asset Protection Trust is a long-existing method of asset protection and asset management accomplished in either one of two ways: the first method is by exporting the assets into a non-United States jurisdiction permitting a foreign trustee to manage your trust and protect your assets from claims and liabilities within the United States. In using this method an individual is permitted the ability to place their assets in jurisdictions such as the Cook Islands, Cayman Islands, Caicos Islands, Belize, Gibraltar, and a list other jurisdictions. As an alternative method, an individual is also permitted to select a foreign jurisdiction and apply that body of law into a trust handled within the United States.

A consultation with an attorney is required to better understand which of the two methods best fits your needs based on your assets, personal wealth, current claims seeking satisfaction, assets desired to transfer, risks, physical location of assets, and many other variables requiring analysis to determine options available to you for an International Asset Protection Trust.

As a foreign trust, a foreign trustee shall be elected by the Trustor and his or her attorney to manage the foreign trust and the needs applicable to such trusts. An attorney can assist you in locating qualified trustee services to best fit your needs.

II. How an International Asset Protection Trust Works

The International Asset Protection Trust creates a foreign trust exempted from United State taxes. It is a legal method of protecting your assets through a flexible structure permitting the Trustor in creating a Trust instrument to manage assets. In creating a foreign trust, the following participants shall be required:

- **Trustor:** This is the person creating the foreign trust.



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- **Protector:** A trust protector is typically used in an International Asset Protection Trust. In some jurisdictions such as the Cook Islands and Caicos, a protector shall be required. A protector shall be granted limited powers as detailed within the trust agreement itself which shall include the power to remove a trustee, replace a trustee, change the situs of the foreign trust, and other powers as granted in the trust instrument. A protector occupies an important management role overseeing the Trustee's management of the trust and has significant powers that can greatly modify the structure and authorizations of the trust. A protector shall be cautiously selected. A Trustor may nominate himself or herself, although the election of different person capable of protecting the Trustor's interests may also be elected for further protection. Although an individual may be elected as a Protector, a trustor may elect to have a third party or a corporation act as protector.
- **Trustee:** A Trustee is a third party physically located outside of the United States jurisdiction and is elected for the purpose of carrying powers over the Trust for the benefit of the Trustor and its Beneficiaries.
- **Beneficiaries:** A beneficiary may be listed as the Trustor himself or herself. As an alternative, a Beneficiary may also be third parties of the Trustor's choice.

III. Who Needs an International Asset Protection Trust

Each individual may have different needs or requirements in establishing an International Asset Protection Trust. As part of the process, Kehr Law will assist a client in reviewing their current financial needs and asset protection needs to establish whether an International Asset Protection Trust is the right fit for the client's immediate and long-term needs.

Trust options may differ for individuals that have already been presented with legal claims or financial claims. Your eligibility for an International Asset Protection Trust may require a thorough analysis and a great amount of research to determine your eligibility and establish a successful foreign trust.

IV. The Process of Forming an International Asset Protection Trust

Each individual may have a different need or requirements in establishing an International Asset Protection Trust. As part of the trust formation process, Kehr Law will assist a client in reviewing their needs and ensure an International Asset Protection Trust fits the client's needs in the immediate future or in long-term financial planning aspects.



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For a brief review of the process, the following steps shall provide you with a brief overview of the extensive process. There are three (3) major steps in forming an International Asset Protection Trust, each of which will require an extensive amount of time, labor, and communication between the client, the attorney, trustee services and professionals involved in the formation of a Trust. Please keep in mind, this handout is meant as a guide and the actual required amount of labor in successfully completing the entire process.

Step 1:

The first part of the process is reviewing the client's financial background, character background and liability exposure (which shall include a review of their criminal background), and needs for an International Asset Protection Trust. During this step, an attorney also reviews any outstanding creditor claims or potential creditor claims to assist an individual and determine if they are eligible to create an International Asset Protection Trust.

Upon finding a valid need for an International Asset Protection Trust, an attorney and client work together in locating the proper jurisdiction for establishing a foreign trust and establishing a foreign trustee relationship. The paperwork process begins at full swing in this first step of the while process as foreign trustee services may require multiple forms to determine your eligibility in their jurisdictions.

Other professionals within the selected foreign jurisdiction or within the United States may be required in completing your foreign trust, its planning, and preparation.

Step 2:

After completing the initial part of the process to determine whether an International Asset Protection Trust is right for you and whether your selected jurisdiction is a proper fit, your attorney then moves forward to the second step.

Step 2 involves drafting and revising large amounts of documents required of an International Asset Protection Trust. Documents requiring drafting include the actual asset protection trust and its customized provisions tailored according to your needs. An attorney may require plenty of communication with a client during this stage of drafting as International Asset Protection Trust. A large number of provisions and ancillary documents are drafted as part of the Trust. Provisions made include limiting trustee or protector powers and authorities, strategies in preparation for emergency



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events, and a number of other provisions benefiting the Trustor, or creator of the International Asset Protection Trust.

This step shall also set out a method of implementing the Trust, funding the Trust, and as an added service may include preparation of initial tax filings required for the Trust. Additional services may be available in initializing and managing your trust which may or may not be covered by the services at Kehr Law. An attorney at Kehr Law will be able to advise you as this second step comes to an end.

NOTE: Visits to the actual foreign jurisdiction during Step 2 shall depend upon each individual, the attorney's needs, the requirements of each customized Trust formation process, and a client's need to become familiar with the Trustee service and other professional services required for the Trust. A client's visit to the offshore jurisdiction shall be recommended from time to time although not mandatory. Exceptions will apply.

Step 3:

This final step is the execution process. Whereas in Step 2 many of the procedures, parties involved, tax documents, and other documents were planned, Step 3 shall be the execution of all documents and procedures to finalize the formation process and breathe life into the International Asset Protection Trust.

Step 3 may also require maintenance of the Trust after it is has been officially executed.

As a reminder, the above information shall serve as a simple informative guide only and does not reflect the entire process in detail. Completion of an International Asset Protection Trust shall require extensive amounts of documents, drafting, revisions, review, time, labor, and client participation due to the sensitive nature of the legal document.

V. Tax Forms and Implications

Creating a foreign trust provides great asset protections, tax benefits, and general estate planning benefits. However, to create a successful International Asset Protection Trust, the formation process shall require numerous tax documents which shall include, but are not limited to the following:

- IRS Form 3520 – Annual Return to Report Transactions With Foreign Trusts and Receipts of Certain Foreign Gifts.
- IRS Form 3520(A) – Annual Information Return of Foreign Trust With a U.S. Owner.



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- Department of Treasury Form 90-22.1 – Report of Foreign Bank and Financial Accounts

Strict deadlines and penalties apply for late filings or non-filings. Upon establishing the International Asset Protection Trust, an attorney and your professional tax advisor may provide you with detailed information about the above-listed forms and other forms as required of your customized Trust.

The required Internal Revenue Code forms, Department of Treasury forms, and other tax procedures will vary depending upon whether your assets will remain domestically within the United States or if the assets funding the trust shall be exported to foreign jurisdictions.

VI. How Do I Prepare to Form or Explore an International Asset Protection Trust

To begin exploring your need of an International Asset Protection Trust, contact the office of Kehr Law by phone at (619)400-4942 or by email at dan@kehrlaw.com and schedule a free consultation.

If you are certain you need a foreign trust as part of your asset protection plan, schedule a consultation today and begin determining who you will name as the Trustor, Protector, Beneficiaries, and which Jurisdiction shall hold your foreign trust. If you are unsure about the eligible jurisdictions the attorneys at Kehr Law may assist you explore this and other planning options.

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