

# CM SKYE

## CM Notes

## ASSET PROTECTION TRUSTS IN THE ISLE OF MAN

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### Introduction

This paper does not constitute or purport to constitute a definitive statement of the law of the Isle of Man or the United States of America or any part or aspect thereof. This paper is intended purely as a general commentary and should not be relied on in any way whatever.

Before in any way acting upon any of the ideas proposals or suggestion contained in this paper, the reader should seek formal legal advice.

For more information on the nature and law of a trust established under the law of the Isle of Man law, please see our brochure - *Isle of Man Trust Law: an Introduction*.

For more information on the law of the Isle of Man relating to fraudulent transfer please see our brochure - *Asset Protection: Fraudulent Transfer; and Re the Petition of Christopher Jollian Heginbotham 1999*.

For more information on the Isle of Man Limited Liability Company please see our brochure - *Isle of Man Limited Liability Companies (LLCs)*

## The Origins and Traditional Mechanisms

The use of a Trust or similar entity for the protection of family assets against the risk of loss due, for example, to political upheaval or uninsured losses of various types, is common in areas of the world that have been or are subject to political or economic instability.

They have not, until recent years, been common in North America, although the use of the trust as a vehicle for the holding of assets for fiscal or family inheritance reasons is common enough elsewhere. Largely due to the recent explosion in litigation - and costly recoveries - in the United States, the use of trusts for to protect family assets has in recent years greatly expanded.

The Isle of Man was an early pioneer of the provision of such trusts, but fell behind when the issues of fraudulent transfer were seen to be significant. All that changed as a result of the *Heginbotham* case in 1995, when the Isle of Man' court determined that the infamous 'Statute of Elizabeth' had never applied in the Isle of Man, and, in consequence, the rules of fraudulent transfer were entirely different from those in other equitable jurisdictions. Effectively, a transfer was protected unless done with fraudulent intent. A future creditor, even where one could be hypothetically foreseen, is irrelevant. This made the Isle of Man probably the best jurisdiction for such work where no actual litigation was in progress when the transfer was effected.

For some years, the favoured mechanism of Asset Protection vehicles, that is to say, vehicles for the protection of the assets of US persons from litigious creditors, has been the offshore trust. Indeed, it had almost reached the point where nothing else was ever mentioned, in spite of the fact that there were and remain a variety of mechanisms available.

The reason for this was primarily a tax reason. The objective was to establish a vehicle into which assets could be placed which:

- protected the assets from attack through the US judicial system;
- would be able to make the assets available, if necessary, to the client and/or his family;
- would at worst be entirely tax neutral and at best enable routine Estate Tax planning to be done;
- would be inexpensive.

To achieve the first objective was comparatively simple - just get the assets out of the USA into a jurisdiction which had no Reciprocal Enforcement of Judgements Agreement. The actual holding mechanisms available then had to be selected. Because it is physically impossible to move real estate, this has been an area of major weakness.

The last point was also relatively simple, in that it ruled out expensive solutions such as Life Assurance policies, so that left for consideration forms of corporation or trust only. Most people ignored entirely the corporate forms because of the tax implications, and concentrated entirely on trusts.

Corporate forms were ruled out because an overseas holding company was bad news for a US person. Quite apart from the enhanced reporting requirements implicit in a Controlled Foreign Corporation (CFC) with Sub-Part F income, a Foreign Personal Holding Corporation (FPHC), a Passive Foreign Investment Corporation (PFIC), there is a distinct penalty provision in relation to Capital Gains Tax.

For a CFC, on the death of the US shareholder, certain punitive rules apply in relation to basis step-up. (s.1246(e) and 1291(e)). (For the layman, *basis* is the base value of the asset for Capital Gains Tax purposes. *Step-up* is the increase of the basis which occurs when the asset is sold or transferred to another party, and which triggers off the Capital Gains Tax liability (or "causes the

liability to be *recognised*.”) On the death of a US person, his estate is subject to Estate Tax, and Capital Gains Tax is forgiven, thereby providing a tax free *basis step-up*. In respect of holdings in a CFC, there is no such forgiveness, and this could easily result in the tax payable being greater than the value of the assets.

So the use of companies or corporations was ruled out. This was a pity, however, because even before the days of the *Check-the-Box Regulations* of 1<sup>st</sup> January 1997, it was always possible to design an exotic entity which could be a corporation in law, but something else for US tax purposes. Companies Limited by Guarantee, for example lent themselves well to this type of design work, and still do. The potential of these vehicles in US tax planning has not yet begun to be appreciated.

In those days too, the Limited Liability Company (LLC) as it has evolved in the USA, did not exist. Today, such forms exist in every state of the USA, as well as many other jurisdictions, often masquerading under other names as Limited Life Companies (LLC), or Limited Duration Companies (LDC), or, as in Barbados, as the Society with Restricted Liability (SRL).

Limited Partnerships were another vehicle which was used extensively inside the USA, but in those days, few offshore jurisdictions had them.

It is only in the last few years that every month has brought news of yet another offshore island proudly proclaiming that it has introduced the Limited Partnership (although some have had them for years; the Isle of Man, for example, since 1909). But Limited Partnerships seemed to be uncertain in their effectiveness.

### **So it had to be a Trust, warts and all.**

Many US Practitioners then looked at Trusts for Asset Protection. They found that there was a rich tradition of Trusts being used for ‘Asset Protection’ in a more general sense - indeed, there is scarcely any other purpose for a Trust. For tax purposes, they were brilliant, since a trust established by a US person which he was also capable of benefiting from was a so-called *Grantor Trust*, and therefore entirely disregarded by income tax rules. Thus the offshore trust was neutral, but was still capable of being structured for basic estate tax planning.

There were, of course, some drawbacks. Firstly, the establishment of a foreign Trust, even though a *Grantor Trust*, led to enhanced reporting. This could, in theory be cured, by providing as a joint trustee, a US trustee, who would resign the moment the heat was turned up, but who, until that time, enabled the trust to argue that it was a US trust for tax purposes, notwithstanding that the proper law was overseas, as were the assets, and the actual management.

The second drawback was the desirability of having a holding company below the trust. Such a company immediately plunged us back into the CFC problem. There were three solutions to these CFC problems. Either the assets were transferred direct into a bank ‘street’ name or nominee company. Or, they were held in a US corporation, which because of the tax attribution back to the Grantor, could be a transparent S-corporation, or, thirdly, the assets were held in a foreign corporation which, although owned by the Trustee, was arguably a nominee company, relying on the decision in *Commissioner v Bollinger 108 S.Ct 1173(1988)*.

None of these were very satisfactory. Not all assets can be held in a “street name”. The use of a US S-corporation immediately brought the assets back into the USA, where they could be frozen and/or sequestered. The use of a nominee company correctly made it impossible to use the company as a mechanism for the day-to day management of the assets by the client.

The problem remained until the advent of the offshore LLC, which, by being classified as a partnership instead of a corporation enabled the Tax Transparent trust to have a Tax Transparent LLC beneath it, with the client as Manager of the LLC.

Other problems derived from the fundamental character of trust law itself, and from the so-called 'Statute of Elizabeth'. The most serious problem of all was perceived to be the issue of fraudulent transfer, and this remains the biggest problem for a foreign trustee. **As noted, the Isle of Man has avoided this problem by the simple fact that the 'Statute of Elizabeth' never applied there, but most jurisdictions had to address the issue by statute law.**

Under normal English Common Law principles, the principles set out in the so-called Statute of Elizabeth (*Fraudulent Conveyances Act 1571 (13 Eliz I Cap 5)*) now contained in the UK's *Insolvency Act 1986*) have been adopted in one way or another by every country which looks to England for the source of its law. (in the USA, the *Uniform Fraudulent Transfer Act 1984*). This is not, technically, a matter of trust law, but is a matter of bankruptcy law. Where a person effects a transfer to a trust with the intent to defeat any future creditor, the transfer can be set aside and the trust declared void.

Virtually every jurisdiction which had adequate equity-based trust law (anything else was and is far too risky in terms of dealing with the unknown) had also absorbed the principles of the *Fraudulent Conveyances Act 1571 (13 Eliz I Cap 5)*.

In the Isle of Man the Statute of Elizabeth had never applied. However, until early in 1999, there was uncertainty, and the only authority was an obiter dicta, (*Re Corrin Bankruptcy - Kermod Trustee of Corrin's Bankruptcy v Craig (1908) (unreported) - obiter dicta per Deemster Kneen C.R.*). In this Deemster Kneen (a Deemster is a High Court Judge in the Isle of Man) thought that the principles of the Statute of Elizabeth had been imported into Manx law. However, this was never generally accepted, and **we now know that Deemster Kneen was wrong. In *Re Heginbotham's Petition 1999* it was determined that** the Statute of Elizabeth had never been accepted into Manx law. Different Manx legislation applied, and in consequence **Asset Protection Trusts or LLCs established in the Isle of Man are now safe, provided that, at the time of establishment, the Settlor was solvent, was able to meet all his known and ascertainable creditors, and had no intent to defraud creditors.**

In any event, for those jurisdictions which were subject to the provisions of the 'Statute of Elizabeth', the risk was too great, not only for the client but for the trustee, and so very quickly a number of jurisdictions legislated to define the situation and ring fence the provisions of the Statute. This however, has led to further problems, in that in the more extreme legislation, such as that of the Cook islands and one or two others (Nevis, for example) the legislation has created a fundamental conflict in equity. This conflict is seen in the recent Orange Grove case in the Cook Islands (*515 South Orange Grove Owners Association and Others v. Orange Grove Partners and Others (1995) No 208/94*). At the heart is the dictum that a plaintiff must come to the Court with clean hands. Equity is about remedies, and Equity cannot be used to deny Equity to another. The efforts of the judges in the Orange Grove case to enforce Equitable principles in the face of legislation that apparently removed them is impressive. The bending over backwards is up to Olympic Gymnastic standards!

Another problem that was completely ignored too was the question of whether a Court in one country has jurisdiction notwithstanding that the proper law of the trust, and, indeed, even the trustee, may be in another jurisdiction. The fundamental principle of equity has long been well understood. Trusts are matters in personam, and relate to the disposition of property. If the property is largely in a specific country, and the parties to the trust are in that country, the court in that country has jurisdiction. In *Duttle v Bandler Kass (1992) 82 Cir. 5084 (KMW)*, the principle was taken a little further. In that case, the Liechtenstein trustee declined to appear in a New York

court. The judge considered that it would be inequitable to allow this to stand in the way of the court hearing the case, and thus the absence of the trustee was ignored.

The lesson in these cases is clear. Trusts are enforced through equity. Equity is NOT the same as Common Law and NOT the same as Statute Law, and anything that goes against equitable principles will be struck down by the courts.

The conclusion is clear. The best law for the protection of asset protection structures which are established with honest intent is that of the Isle of Man. After that come the jurisdictions which have legislated the problem away. These include Gibraltar (which has correctly addressed the matter as an issue of bankruptcy law), Cayman Islands, Bahamas and Cyprus. Jurisdictions which have apparently ferocious protection, but whose use is virtually a badge of fraud in itself include Cook Islands, Nevis. Some jurisdictions, which have statute trust law, have too many uncertainties in their law to justify the risk of using them for asset protection. These include Jersey, Guernsey, Mauritius.

### **Recent litigation has created many uncertainties - Recent legislation has changed the rules.**

In August 1996, the USA enacted the *Small Business Jobs Protection Act 1996*, which, under the wing of a fairly innocuous piece of social security legislation, fundamentally altered the tax rules relating to offshore Grantor Trusts. As far as Asset Protection Trusts are concerned, it abolished the charade of the foreign trust being a 'US Trust' for tax purposes, and thereby forced the reporting regime for foreign trusts on all offshore Asset Protection Trusts. It also greatly enhanced that reporting regime, including a requirement on the offshore trustee to provide information, and appoint an agent in the USA for that purpose. This latter has caused real difficulties in situations where there are beneficiaries resident outside, as well as inside the US tax net.

Finally, the *Check-the-Box Regulations* (Treas.Reg 301.770) that came into force on 1<sup>st</sup> January 1997, changed the whole tax classification mechanism for entities, and thus the arguments that had been stitched together in favour of the use of the offshore Asset Protection Trust all came apart.

So where do we now stand? Under *Check-the-Box Regulations*, the first question is whether the entity is included in the so-called 'per-se' list of entities. If it is, then its classification is clear, and carved in stone. If it is not on the list (and virtually no offshore entities are), then the question is whether the entity is for the purpose of conserving and preserving assets. If it is, and if it has no commercial objectives that imply commercial risk, then it is a trust for tax purposes, no matter what its legal form may be.

If it does have commerciality, then if all its members have unlimited liability, the entity is a default partnership, and if this is not the case, it is a default corporation. However, in both cases, there is provision for the entity to **elect** to be treated otherwise. Thus a commercial LLC will be a default corporation, but can elect to be treated as a partnership.

All these changes have fundamentally altered the logical argument which led to the Trust as the favoured vehicle in the first place. It will be recalled that the objectives were firstly to take the assets out of the reach of the US judicial system. This can be done by using a number of entities, which are NOT trusts. For example, a Liechtenstein *Stiftung*, or an Isle of Man LLC can both do the job. Both can also make the assets available to the client or his family, if necessary.

From a tax point of view, both could be classified as Trusts for US tax purposes, or, indeed, as partnerships. Neither would be able to provide Estate Tax planning, but both can provide Asset Protection characteristics, with the LLC coming out top in this regard, because of its flexibility and low cost.

If then we can acquire tax transparency without having to use an actual Trust, why use one? We have already noted the knots in which certain jurisdictions have tied up their trust law, so as to make it unreliable at best and dangerous at worst. We have already noted that the application of the rules of equity to Asset Protection can have some unforeseen consequences. It is, therefore, well worth looking at whether other forms of structure can be used, in particular an LLC.

### **New forms can now be used**

Corporations, although in origin derived from trust law, are creatures of Statute. And an LLC is absolutely a creature of Statute.

Thus the complexities of Equity simply do not arise in interpreting how LLCs operate. We now, therefore, have three available forms. The Liechtenstein *Stiftung* is fine for those that understand Germanic type law. For those who do not understand it, the two English-speaking forms of the Company Limited by Guarantee or the LLC are preferable. As between these latter two, the Company Limited by Guarantee is infinitely more flexible and sophisticated, but entirely unknown in the USA. Persuading an Attorney in the USA to use a Company Limited by Guarantee (or its sibling, the Company Limited by Guarantee and Having Shares, the so-called *Hybrid* company) is often very difficult, as many have great difficulty in getting their minds around the concept of a company with members who have no shares, but who have no distribution rights, or votes! However, the LLC is well understood. After all, it was the Americans who invented the LLC.

There are some difficulties with using the LLC. One that we have already noted is the inability to do Estate Tax Planning. But if the LLC is going to be characterised as a Trust for tax purposes, then there is no harm in having an actual trust on top of it, primarily, of course, for the tax planning. The asset protection function of the trust is then secondary.

Such a trust could, indeed, be a domestic US trust, established in Delaware, Nevada or Alaska.

Let us assume that it is desired to use an Isle of Man Trust or a LLC (or both) as an Asset Protection vehicle for a person with \$5 million to protect.

There are several options open:-

1. The client with the assets to protect will establish a foreign Revocable Trust. This can be done in the Isle of Man. As noted, this is not intended primarily to provide Asset Protection and this means that it can focus more effectively on the basic estate tax planning. Being revocable, it will be treated as an incomplete gift for US income and capital gains tax, and is thus wholly tax neutral for those purposes. The establishment of the Trust would not give rise to the recognition of capital gain on any assets inserted into it.
2. As an alternative, the client could set up a domestic revocable trust in Delaware or Alaska. This again is used primarily for Estate Tax planning purposes. As a domestic trust, the reporting requirements are considerably reduced, and the trust would be entirely transparent for tax purposes.
3. The third option is for the client to establish a traditional full irrevocable foreign Asset Protection Trust in the Isle of Man. Since the case of *Re Heginbotham's Petition* 2ITELR 95 (see above) we can be sure that such a Trust has immensely strong Asset Protection features. In addition, the Trust Deed will be drafted to have all the appropriate Estate Tax planning provisions including clause for the marital deduction. As a foreign trust, it will have enhanced reporting requirements, and the trustee will have to appoint an agent in the USA to provide information to the IRS on request.

One of the major problems with trusts is that the Settlor must transfer ownership AND control of the settled assets to the Trustee. The Trustee must manage these assets as determined by law, and has a major duty and responsibility to the Beneficiaries (not the Settlor) if anything goes wrong. If a Settlor tries to dominate or control the process, there is a real risk that the trust may be declared a sham in which case the whole structure fails in its asset protection function, or there is a risk that the Beneficiaries may sue the Trustee for breach of trust in that he allowed the Settlor to make decisions that the Trustee should not have permitted. There is plenty of case law to demonstrate that this is a very real risk.

To avoid some of these issues, and to provide the powerful asset protection features required, in all three cases, the trustee drops the assets into an Isle of Man LLC. Specifically designed for use as an Asset Protection mechanism, the LLC would be set up with three Members. Two of these would be companies in the Isle of Man beneficially owned by a Trust Corporation (the two *Offshore Members*). Each would have a 0.05 % interest. (\$2,500), which they would hold beneficially. Each would, however, irrevocably and unilaterally renounce any entitlement to income distributions.

The Third Member would be the Trustee of the Revocable Trust established by the US Client. This Trustee would have a 99.9% interest. The LLC would, for tax purposes, be a default corporation, so in order to avoid this, the LLC will file Form 8832 with the IRS within 75 days of registration, and thereby obtain a tax status as a transparent partnership. The injection of the assets would thus not cause capital gain to be recognised on any appreciated assets so injected.

The LLC will be established with a clause in the Operating Agreement that says all decisions must be by unanimous vote. There will also be a provision that says that distributions to Members need not be in cash, but may be in any form that is unanimously agreed by the members. We can also, optionally, include provisions that state:

- no assignment of a Member's interest will be permissible;
- there may be no distributions during the life of the LLC.

Immediately after the establishment of the LLC, the three members (and the US client as beneficiary of the trust) agree that, in the event of any one resigning or retiring from membership, and the remaining members resolving to continue the LLC, the interest of the retiring member shall be purchased by the remaining members by means of a Promissory Note the amount of which shall be fixed at the date of such retiral, carrying interest at 1 percent per annum, payable on the dissolution of the LLC, or at any time during the lifetime of the LLC at the discretion of the LLC, but in any event not later than fifteen years after the date of the Note. This would mean that the assets would be locked in for at least a further fifteen years.

There should also be a side agreement to the effect that provided that the Promissory Note is still beneficially owned by the retiring Member or his estate at that time, in the event of the dissolution of the LLC, or the death of the retiring member, or in the event that the full 15 years is run, the remaining members will buy back the Promissory Note on or as at the day before such dissolution, death or maturity date, at a price reflecting the value that would have accrued to the retiring member at such time, had he not retired. This ensures that the retiring member will eventually get his full value. If the retiring member or his estate assigns or otherwise ceases to be the beneficial owner of such promissory note, the side agreement is automatically terminated and of no effect. The two *Offshore Members* would, before this happens, have entered into another agreement with the retiring Member or his appointee, providing severance compensation for loss of office as Manager of the LLC.

From the tax viewpoint, the LLC will be exempt from tax in the Isle of Man. For US Income and Capital Gains Tax purposes, the Revocable Trust is wholly transparent. For US tax purposes, the US client will be treated as the beneficial member of the LLC. The LLC will also be tax transparent as a partnership. Thus the US Client will be taxed on the whole of the taxable events in the LLC, as if the structure did not exist.

### **Recognition of foreign judgements.**

There is no treaty or other agreement between the Isle of Man and the United States of America relating to the mutual recognition and enforcement of judgements. Any judgement in a US court would, therefore not be recognised, and it would be necessary for the creditors to obtain a judgement in the Isle of Man courts starting all over again.

There is no provision for contingency fees in the Isle of Man, and this would mean that the creditors would be responsible for paying their advocates, win or lose, and would also have to pay money into court as a surety for the defendants.

### **Consequences for the Creditor?**

The LLC is an Isle of Man legal entity created under the *Limited Liability Companies Act 1996*. It is not a Trust. No US court will have jurisdiction. Only the Isle of Man Courts have jurisdiction. An order made by a US court requiring the US Client to instruct the overseas Trustee to instruct the LLC to distribute the assets will not be enforced in the Isle of Man. The Members of the LLC must resolve unanimously to make a distribution (assuming that the Operating Agreement actually permits distributions (see above)), and the two 'Offshore' Members do not so resolve.

The parties attacking the US Client can either take the action to the Isle of Man courts, and endeavour to look through the trust and then obtain a charging order over the US Client's beneficial Interest, or they can ask the US Court to order the US Client to revoke the Trust, and then by resignation force the liquidation of the LLC.

A very determined judgement creditor might find his way into the Isle of Man court. Let us assume that he does, in spite of *Re Heginbothams Petition*, obtain a charging order on the interest of the US member, and seeks to become a member in place of the bankrupt US member. However the two *Offshore Members* do not approve of any transfer or assignment of the interest, and, in consequence, the creditor cannot become a member, or participate in the management. Such a creditor will only be entitled to receive such distributions as the trustee for the original US client would otherwise have been entitled to. Since the two *Offshore Members* will not agree to any distributions, no distributions can be made.

This means that no transferee can force a distribution. He can only wait until the members unanimously decide to make a distribution. This could be never.

For Tax purposes, however, the creditor/transferee is now entitled to any distributions should they eventually be made, and is thus taxable on the taxable events in the LLC in place of the bankrupt US client. He thus pays tax on profits and gains that are never distributed to him.

Assume now that our creditor backs off the Isle of Man Court approach. He then applies to the US Court for an order ordering the US Member to revoke the trust and by causing the retiral of a member, thereby force a liquidation of the LLC.

However, the two *Offshore Members* resolve to continue the LLC, and to buy out the retiring Member's interests. In accordance with the Agreement (see above), the interests are valued, and a Promissory Note for a 15 year period with interest at 1 per cent is issued to the retiring Member. He passes this to the Creditors.

The Creditors, however, still do not have their hands on the real assets. They may have to wait for fifteen years before the assets materialise. Provided that the LLC always pays the 1% interest, and does not become insolvent, there is nothing the creditor can do, except wait. American Attorneys working on a contingency fee basis will have to wait too.

In the meantime, the LLC will conduct its affairs as its two remaining members determine, in consultation with their new Manager (who will have been appointed prior to the action against the US client and who will be the former US member or his nominee), who will have a generous contract, providing a handsome salary and life assurance/pension benefits, together with a generous severance compensation in the event that the LLC goes into liquidation or that he is obliged to assign the Promissory Note to other parties.

If the LLC has been established fraudulently, with intent to defraud, then clearly any court will order the dissolution of the LLC. But, equally, a Trust established in such circumstances would be voided. If, however, there is no fraudulent act, the LLC must be secure.

Of course, the overlying trust itself may also have strong asset protection features. If the trust is a domestic trust, Alaska and Delaware have both legislated to provide on-shore Asset Protection Trusts. If the trust is an Isle of Man irrevocable trust, there are also strong asset protection features, as noted above. As already noted, as a result of the decision in the case of *Re Heginbotham's Petition 1999 2ITELR 95* **Asset Protection Trusts or Asset Protection LLCs established in the Isle of Man are now safe in Manx law, provided that, at the time of establishment, the Settlor was solvent, was able to meet all his known and ascertainable creditors, and had no intent to defraud creditors.**

### Setting up the structure

At the outset, the person contemplating an Asset Protection structure needs advice.

1. Asset Protection Trusts need to be carefully tailored to fit not only the special needs of the family concerned, but also the federal and state fiscal and legal requirements. **Competent legal and fiscal advice is essential.**
2. The Settlor(s) establishing such a trust must have complete confidence in the Trustees chosen. **Such Trustees must demonstrate technical competence in the handling of business for U.S clients**, as well as financial soundness.
3. The jurisdiction chosen for the proper law of the trust must be certain and appropriate. The jurisdiction should have trust law which is based on equitable principles, and there should be stability in the regulatory framework governing the activities of Trustees. The jurisdiction should also provide privacy for family affairs.
4. Asset Protection structures should, under normal conditions, be inactive. However, should such a Trust come under attack for any reason, it is essential that the Trustees can call on the services of appropriate advisers with particular expertise in this area. The operation of the Trust and any underlying entity must be carefully and continuously monitored.
5. It is an absolute prerequisite that, at the time of establishing the Trust, the Settlor(s) is/are solvent, by any definition, and that there is no question of any fraudulent behaviour.

Because the consequences for the Trustee in accepting a Trust without satisfying itself on these points could be severe, the Trustee will, in its own and the Settlor's interests, make careful enquiries before accepting trusteeships.

### **Structure of Trust**

While the terms of an irrevocable Asset Protection Trust can vary, it is normally structured as follows:

1. the Settlor irrevocably transfers selected assets to a Trust governed by the law of a foreign (non-U.S.) and appropriate jurisdiction, such as the Isle of Man. The Trust term is, say, ten years, with the possibility that this can be extended;
2. the Beneficiaries are a class of individuals including members of the Settlor's family. The class of Beneficiaries can be extended, but it cannot include the Settlor himself or herself. Distributions of income and capital are at the discretion of the Trustees;
3. in the case of the Trust being a foreign situs Grantor Trust, there is no need for there to be more than one Trustee;
4. a Committee of Advisors is established from one or more persons nominated by the Settlor. The Settlor will normally be the Chairman of the Committee of Advisors. The Committee of Advisors advises the Trustees, although its advice is not binding;
5. the assets are then either placed direct into a securities account with an Investment Management institution, or are placed in an underlying offshore 'LLC';
6. the Settlor can be the Manager of the underlying LLC, operating with powers delegated by the Members. In such capacity he can direct the investment of the assets. He will also be appointed as Investment Adviser to the Trustee, and in this capacity he can also be remunerated for his services.

### **Establishing an Asset Protection structure with CM Skye**

**CM Skye** is a subsidiary of CM Group, with offices in the Isle of Man, Switzerland and associated office in London. CM Skye has a particular focus on the provision of offshore fiduciary services for US persons, including Asset Protection structures, Joint Venture holding structures, structure for the film industry, and international charitable and non-charitable family private foundations.

Trustee services are provided either by its subsidiary, CM Skye Grantees Limited, or by a dedicated private trust company where that is appropriate. The structure can be administered either in the Isle of Man, or in Switzerland in the canton of Neuchâtel, at the choice of the client.

If you would like to proceed to establish a structure. Please contact us at CM Skye, 2 Water Street, Ramsey, Isle of Man IM8 1JP tel +44 1624 811611 fax +44 1624 816645 and email [charles.cain@cm-worldwide.com](mailto:charles.cain@cm-worldwide.com), for the attention of Prof. Charles A. Cain MA FCIB TEP. We endeavour, whenever possible, to arrange an early meeting with the client and his professional adviser. In our view this is essential to establish the proper trust relationship. Such a meeting can take place in the Isle of Man, in London England, or in Dublin Ireland. If this is not possible, we shall endeavour to visit the client at his home.

*Please keep in mind:*

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