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The Checks and Balances of the Asset Protection Trust

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Because Asset Protection ultimately relies on removing the assets from both the U.S. jurisdiction, and the control of the clients, a very good question would be: **How can a client be sure that the new foreign Trustee doesn't run away with the money should we ever need to use the Trust?** To answer this we need to look at the intricacies of how a well-drafted Asset Protection Trust creates internal and external 'checks and balances.'

To begin, let's look at how the plan 'controls' the money:

1) We create a *legal* structure which requires the approval and consent of various parties who act as checks and balances on the assets, and

2) We create a physical tracking mechanism directly with the independent client chosen bank, which holds the money, so that the client is always aware of where the money is.

The Asset Protection Trust has 4 primary roles:

1) The Settlors (the clients)
2) The Trustee
3) The Protector
4) The Beneficiaries

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The legal control of the assets is done through a 2 party approval mechanism. This is kind of like requiring 2 signatures on a check. The Trustee is responsible for the management of the assets and has *legal title*. However, unless the Trustee is the client, they do not have physical possession of the money, which is held at an independent and unrelated bank.

In order for the Trustee to actually do anything with the money, they then must also have the consent of The Protector. This would include things like wiring the money to another bank or even to another account with a different name, or making any changes whatsoever in the physical location of the money

The role of Protector is just that, to protect the assets of the Trust for the benefit of the Beneficiaries. As such the Protector has 2 primary jobs: 1) to approve of the actions of the Trustee, and 2) to remove the Trustee if the Trustee is not acting in the best interests of the Beneficiaries. This is what ensures that the Trustee doesn't run off with the money.

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So who keeps an eye on the Protector? This is where the loop closes back to the only location in which the clients can have 100% security – themselves. The Settlors (clients) have the power to remove and replace the Protector for any reason they choose to at any time. The only exception is if a U.S. court is demanding that they do so to appoint the court or a court representative as Protector, in which case that particular order is ignored.

The only other possible loophole that could endanger the money is if both the Trustee and the Protector conspired together to defraud the Trust. This is highly unlikely in and of itself due to the fact that the Trustee is a large Trust Company and has their own internal checks and balances as well as the fiduciary duty and liability to the Trust, and the fact that the Protector is personally chosen directly by the client and has the same fiduciary duty. Nevertheless, the plan has one final check that ensures that the client themselves always have full knowledge of where the money is, and where it is going to.

This final check is called a “client acknowledgment” procedure. The bank, typically a large private Swiss bank, chosen by the client, will have a hold period prior to the execution of any orders to withdraw funds, or move money from the Trust account. This procedure would require the bank to have a personal confirmation that the Beneficiaries (also the clients) have direct knowledge of the proposed transfer.

While the Beneficiaries are not in “control” of the money directly, since the bank must have a direct personal verification that the Beneficiaries are aware of the transfer, if a proposed transfer is not approved, the bank will be so informed, by the clients themselves. The order would then be delayed for a sufficient period of time for the Settlors to appoint a new Protector, who will appoint a new Trustee.

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As you might imagine, the net effect is that it is virtually impossible to make any move with Trust assets without the client’s direct knowledge and consent. This combined with the fact that any serious Asset Protection Plan is going to use only the most stable and reputable institutions to fill any fiduciary role makes having your assets offshore safer than the local bank down the street by far.

The difference is that the bank down the street is in the jurisdiction of the court at the other end of the street. And right in the middle is the all-too familiar lawyer’s office, which is where all the trouble began in the first place.

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