



## Briefing Note

# Trusts, Asset Protection and Litigation


In these turbulent times and in an increasingly litigious society it is more important than ever to take steps to ensure that assets are protected against potential claims by third parties. Turcan Connell is renowned for its specialist advice in wealth management and asset protection. However, asset protection is not only about planning for foreseeable matters such as making financial provision for children or tax planning, it is also about providing for the unexpected.

While very few of us expect to be involved in a litigious matter or have a claim made against us, the unexpected can happen and should it occur, it is vital that effective measures are in place to ensure that assets which may be subject to a claim are adequately protected. This is particularly important not only for individuals, but also for those engaged in partnership and who are exposed to claims against the business. While as individuals we can limit our exposure to risk, we cannot always account for the actions of others, who may expose us to a potential claim.

Should such a claim be made, then all assets which are held in a personal capacity are potentially at risk, and may be subject to a claim from any party who has obtained a court order for a monetary award. However, assets which are not held directly by an individual have a much greater degree of protection. Transferring assets into trust is one of the most effective ways of sheltering assets from any such claim. If the worst happens and assets may be at risk as a result of court proceedings, effective trust planning can significantly limit the potential exposure to risk.

A number of measures such as interdict and inhibition are available to parties who want to pursue a claim and which can prevent the transfer of assets at that stage. Not only does this put personal assets at risk but it can also seriously affect the capacity to continue to run a business during that period.

When it becomes apparent that a claim is to be made, a limited number of steps can be taken to protect assets at that stage, however, this is a complex process. In certain circumstances the court or appointed official has the power to review any "gratuitous alienations" made by an individual in an attempt to shelter assets. For example, where assets are transferred to a family member, friend or associate, the court can reduce any transfers which have been made within the last five years and which are not for full value. Even where a transfer has been made to an unrelated party for less than full value, the court can still reduce any transfers made within a two year period. As a result those assets will remain open to attack in litigation. However, when assets are held in trust there is potential to reduce the scope of a claim against personal property.



It is important to obtain advice in order to limit the assets exposed to risk and also to ensure that any tax consequences of such planning are considered and where possible, mitigated.

Turcan Connell's Dispute Resolution and Trust and Tax teams offer proactive advice in this area in order to provide clients with the greatest level of protection possible and while it is best to put protection in place at an early stage, it is never too late to seek advice.

For more information please contact Lynn Richmond, Paul Forrester Smith (Dispute Resolution); or Yvonne Littlefield or Eilidh McFadzean (Trust and Tax) on 0131 228 8111.

This note is intended to provide only an overview of some of the issues arising from trust and litigation issues. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice. If you do not wish to receive further briefing notes and similar information from us please write to us at the address given above requesting that your name be deleted from our database.  
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