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Personal Business

You've finally got it made: You're a CEO or plant manager, a partner or director. Or you've landed your biggest contract yet. Suddenly, somebody slaps your business with a liability suit. However remote your involvement, your family could face personal bankruptcy, as some partners did at the now defunct accounting firm, Laventhol & Horwath.

To keep such nightmares from becoming reality, financial advisers are increasingly suggesting that executives and professionals take a bold new precaution: an asset protection trust (APT) to keep part of your money on a foreign island. That may sound a lot like using a tax haven to hide income from the Internal Revenue Service. But it's "very different from the old days of 10 or 15 years ago," says Alan Klein, an Arthur Andersen partner in Dallas. An APT won't save you a cent in income taxes, and you disclose it to the IRS. Its purpose is solely to put "layers of insulation" between your family and "the litigation explosion."

In its simplest form, the APT is a bank trust account in a jurisdiction that doesn't honor judgments by U.S. courts. So if you lose back home, your opponent "would have to sue you all over again" under the island's law, explains E. Lisk Wyckoff Jr., a partner in the New York law firm of Kelley Drye & Warren.

Especially where local law tilts toward trusts, the prospect of paying foreign lawyers for years more of litigation can make an opponent back off. "The idea is to change the psychology, so the defendant can be offensive in the defense," says Barry Engel of Engel & Rudman, an Englewood (Colo.) law firm specializing in APTs.

LAP OF LIABILITY. Still, no one can be sure how a case will turn out. So some advisers suggest arranging a backup—a second trust on another island. If your opponent shows signs of winning, "you pick up the phone and do a wire transfer to a new country," suggests John Erb, prin-

Planning

ENDANGERED ASSETS? TRY AN ISLAND STRONGBOX

cipal in De Teffé Capital Management in Alexandria, Va. "There's no judgment against you there, and they'd have to start the process all over."

If your assets are in the millions, even the prospect of fighting a few more years on

claim, and all cases turned out "substantially better than if the client had been sitting in a corner with all his money in his lap."

Who should consider an APT? Accountants, lawyers, architects, surgeons, and any others exposed to professional malpractice suits are prime candidates, Erb says. If

pany's insurance coverage.

When is an APT worthwhile? That depends partly on whether your wealth is enough to tempt what Klein of Dallas calls "would-be creditors lurking around looking for deep pockets." And it depends on whether it's affordable in relation to your assets. As a rule of thumb, you should have a net worth of around \$500,000 and up. Expect a setup charge of \$15,000 to \$50,000, or a small percentage of the assets, and a yearly maintenance fee of around \$2,000.

An APT may allow you to drop or reduce liability-insurance premiums. And the package often includes a family limited partnership, adds Klein, which lets you keep your assets comfortably close to home "until a predatory creditor is breathing down your neck and you transfer the funds up to the trust."

ISLAND-HOPPING. Above all, advisers agree that any APT should be part of your overall estate planning and that you should begin the process pronto. The trust must be opened before you get sued. And the longer your APT exists before any suit surfaces, the more likely it will stand up against the argument that you tried to defraud a creditor. For starters, ask your regular attorney to bring in a stateside adviser with APT skills. As to an offshore trustee, Wyckoff favors well-known foreign banks for their soundness and long experience in offshore trusts for affluent Europeans.

As APTs become more popular, more islands are revamping their trust laws to draw business. Among the favorites are Bermuda, Gibraltar, Trinidad, the Bahamas, the Caymans, the Channel Islands, the Isle of Man, the Turks & Caicos, and the Cook Islands, near New Zealand.

Since you should visit your trustee at least once, you might prefer a place that's warm and close. But remember, you're not there for the beach. The idea is to keep your treasure chest safe from the sharks. *Dick Janssen*



ASSET PROTECTION TRUST ACCOUNTS ARE BEYOND THE JURISDICTION OF U.S. COURTS

foreign soil may not deter your creditor. Should you be the first to tire of the strain and expense, your APT can at least make for a favorable compromise. Of the 500 or so APTs his firm has arranged since 1987, "about two dozen have been tested" in suits, says Engel. Settlements averaged 15% of the original

you're an accountant in a partnership, for instance, you could be wiped out by a botched audit "by a partner you never met in another office." While corporations afford more protection than partnerships, Erb says directors and officers can become targets of class-action claims that run far beyond their com-