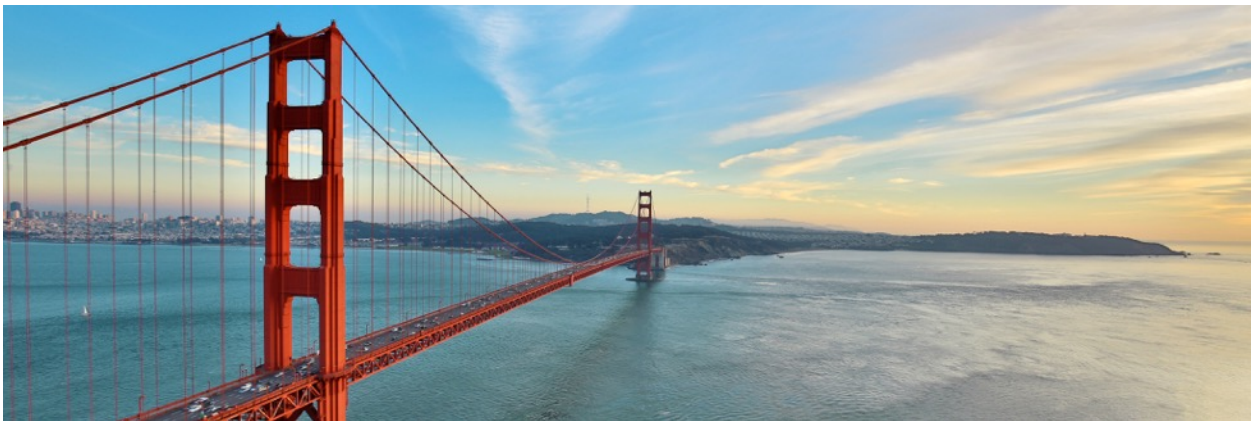
ASSET PROTECTION COUNCIL™

# 5 Reasons the Bridge Trust® is *better* than a Foreign Asset Protection Trust



The Bridge Trust® combines the protection of a fully offshore asset protection trust with the simplicity of a domestic trust. This article explains why we believe it is actually better than a purely foreign APT or a purely domestic APT.

How can the Bridge Trust® be better than a fully foreign asset protection trust? For the same reason that a single strand of spider silk can be stronger than steel -

**FLEXIBILITY!**

## What is the Bridge Trust®?

The Bridge Trust® is an asset protection trust which is registered in an offshore asset protection jurisdiction; however, for U.S. tax compliance it is considered a simple domestic grantor trust. If, and when, it becomes a tactical advantage for you, the trust may 'cross the bridge' and become a fully foreign asset protection trust.

Because of how it is designed, until that triggering event occurs, the trust is not seen by anyone but you. That means no IRS compliance or disclosure. Also, because the trust is a simple domestic grantor trust, you may stay in direct control of your assets and are permitted to be the initial Trustee.

In essence, the Bridge Trust® is engineered to give you offshore protection with domestic simplicity. And most importantly the Bridge Trust® gives you the one thing that is most critical to strength – FLEXIBILITY!

### When Offshore is Best

There are times when having a fully foreign asset protection trust (foreign APT), settled in one of the premier jurisdictions in world (like The Cook Islands) is exactly what you need and want.

There is nothing that I know of that is better to protect your assets in an aggressive frontal attack (while still keeping them as yours) than a fully foreign asset protection trust.

The foreign asset protection trust is a tactical masterpiece when used properly in an actual assault! Over the past 20 years, I have been involved with over 50 cases with clients where we have successfully used this tactical advantage to come out on top.

If I am in a firefight beside my clients against an opponent using live ammunition, I want to be firing back with real bullets, using bigger guns and from higher ground! I want the tactical advantage. When it's time to fight – let's make sure we win!

But those times are frankly rare, and with good diplomacy and a strong defense, they become less and less likely. Any soldier will tell you that avoiding a battle is far better than winning one. There is always a very real cost to war, even when you win. War is hell and so is litigation!

## 5 Reasons the Bridge Trust® is better than a Foreign Asset Protection Trust

### Reason #1: Flexibility

By far the most significant and important 'cost' of beginning a fully foreign asset protection trust is the loss of your flexibility. Seventeenth century Prussian General Helmuth Karl von Molte famously said:

***"No battle plan ever survives contact with the enemy."***

In litigation, flexibility is the key to winning. No litigator wants to go into the courtroom with only one argument. Prosecutors go for multiple 'lesser included charges' just to make sure they leave with a conviction. Defense attorneys prepare as many defenses as possible, even though just one winning argument is enough.

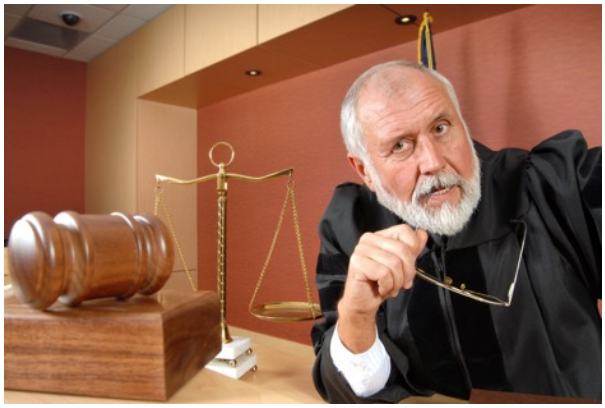
Your execution needs to be tactical, but your planning must be strategic. If you move from strategic to tactical too soon, you may not be able to extract yourself. There is no place where this is more accurate then when talking about optics.

"Optics" is the word litigators use to describe how a case "looks" to a judge or jury. If a case has good optics, it means it feels right. Arguments go over better and your chances of winning go way up.

Bad optics means it doesn't pass the smell test, and bad optics can be the kiss of death for a judge or jury. Even more importantly, bad optics put you at a severe disadvantage when negotiating.

For better or worse, nowadays, ‘offshore’ conjures bad optics. This is truer today than ever before as illegitimate uses of offshore, like hidden accounts with stolen money and tax evasion, continue to make headlines. Let me give you a real world example where optics made all the difference.

**Martin’s Case:**



Martin had been a client for over 7 years. He became involved in a civil issue over a transaction he had been a party to. We had been waiting to trigger his trust until it became apparent that it was going to be really necessary. In other words, until it gave us a tactical advantage.

One day he called me to tell me that his civil case had been upgraded to include criminal charges – all of the sudden the optics became critical.

We had a conference call with his criminal attorney and the one thing he insisted we cannot do is trigger the trust and move the assets offshore. For him this would create such bad optics that he felt he would not be able to keep Martin from serving time.

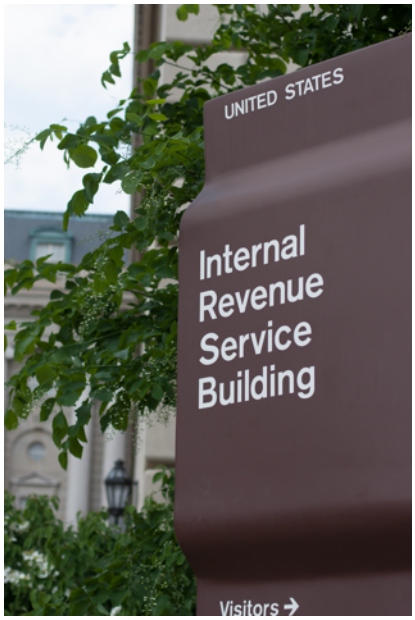
Because we had the Bridge Trust® in place, and had been strategic about not triggering it too early, we were able to make that tactical decision in real time to keep the trust, the trustee and the assets in the U.S. Therefore, we didn’t have to disclose any offshore accounts or jurisdictions to the prosecutor, the court, or the attorneys, because there were none.

Martin went on to both plead out the criminal charges with no jail time (because we had good optics) and still use the existence of the asset protection planning to successfully settle the civil issues on very favorable terms to him.

Had Martin had a fully foreign asset protection trust in place he would have be stuck. He would have had no choice but to disclose and the optics would have been destroyed because he would have really looked like the bad guy they had painted him to be (and which he really wasn’t).

The point is obvious, a foreign trust is not always a tactical advantage. What you want is the ***option*** to have a fully foreign trust – ***not the obligation***. This huge flexibility advantage alone is enough for me to consider the ***Bridge Trust®*** a superior plan than a commitment to a fully foreign asset protection trust from day one.

## Reason #2: Compliance




In addition to greatly reducing the flexibility and options to control the optics of your case, by fully committing to a foreign APT you have also obligated yourself to a greatly increased reporting and compliance burden.

Most of my clients think twice before voluntarily submitting themselves to additional IRS requirements and scrutiny. What this compliance includes, at the bare minimum, is FORM 3520 and FORM 3520A, filed annually.

If you additionally have offshore accounts, which make sense to include if you have a fully foreign APT, then there is even more compliance under FATCA, but let's just focus on the 3520 forms.

Form 3520 is a full initial report required by the IRS for any foreign trusts. It is 6 pages long and includes the following:

1. Full personal information on all of the settlors, beneficiaries and the trustees of the trust including social security numbers and tax ID numbers.
2. A list of all transfers made into the Trust and the value of those transfers.
3. You are required to list a U.S. agent for the trust who is required to be able to provide the IRS will all relevant information on the trust, including a copy of the full trust itself.
4. If you choose not to appoint a U.S. agent for the trust you must attach:
    a. A full copy of the executed trust,
    b. Summary of all written and oral agreement and understandings related to the trust,
    c. Memorandum or letters of wishes,
    d. Subsequent variances to the original trust documents,
    e. Trust financial statements,
    f. Any other documents relevant to the trust
5. A very detailed list of all distributions made from the trust during the taxable year and their tax classification as a gift, a sale or a loan.
6. You must sign the form under penalty of perjury, as if you had testified to all of the above in a court of law.

This must be updated each and every year on FORM 3520A. IRS also takes the filing of this form very seriously, and failing to file it on time every year, can result in a penalty of 35% of the full value of the Trust assets. This is very severe.

What concerns me the most about subjecting yourself to the required filing of this form is the further reduction of your flexibility. Your trust, in effect, has now been memorialized with the IRS. If you determine that you need to change terms or provisions you are leaving a clear trail which, you guessed it, can hugely impact the optics you may eventually have to deal with.

One of the greatest benefits of any trust structure is that it is a private document and can be managed very privately. Once your trust becomes foreign that privacy, and all the benefits it provides, is essentially gone.

There is also the very real risk that in the coming years these reporting requirements are enhanced by the U.S. government even more, increasing your burden significantly. As we have already discussed, offshore is presently a bad word, so you can expect more scrutiny, and more reporting, in the years to come.

## Reason #3: Cost

No matter what your budget, the financial cost should be considered. A fully foreign APT has several required costs to consider:

1. **Annual Trustee Fees** – These run from $2,500 per year to well over $5,000 per year, depending on the jurisdiction and the Trust company. They are required and failure to pay them results in the termination of your trust.

2. **Annual Trust Registration Fees** – These are fees required to re-register your trust each year. In most jurisdictions if you fail to register your trust annually, then it expires and cannot be renewed. The reason for this is to provide incentive for you to pay your fees every year. These fees are typically paid by your resident Trustee, so everyone must get paid annually for your trust to be valid. The amount is often wrapped in the Trustee fee, but when broken out runs between $500 and $1,000 per year.

**3. Initial Set-Up Fees** – These vary greatly. On the one end, I have seen fees as low as $10,000, usually from non-attorney document preparation firms. On the other end, I have seen large NY law firms charge over $100,000 for an offshore plan. In general I am comfortable saying that you can get a well drafted and supported plan from a reputable law firm from between $25,000 - $45,000.

**4. Accounting and Ongoing Legal Fees** – A foreign APT requires annual reporting by the IRS. Your accountant or tax attorney should be filing the FORM 3520 and 3520A at the minimum. As discussed this is a very detailed form and annual costs based on what I see clients pay run between $3,500 and $5,500 a year. Ongoing legal is based on the time you need. In my opinion you should be speaking with your attorney at least annually, so factor in another $500-$1,000 there.

Even if your planning were given to you for free (which surely it will not be), and all you had to do was pay for the maintenance at a total of $5,000/yr. (it would likely be more), and file the IRS form 3520A each year, this still may be too significant a burden. In 10 years, that totals $50,000 in annual fees (or more) and 10 years of IRS filing. Most plans will be in existence for 20 years or more (otherwise it does you no good when you need it), so the annual costs are definitely a very real consideration.

## Reason #4: Control

For a fully foreign APT to work, you must not be in control of the trust. This of course makes sense, because if you are in control of the trust, then a judge can simply order you to repatriate the assets and give them to the court.


As discussed above, once it becomes tactically advantageous to do so, this loss of control by you is an acceptable cost to preserving your asset base against an aggressive attack.

But if you are setting up your trust now as a preventative measure, and the waters are calm, then I can bet that you would like to continue to control your assets.

Some planners attempt to give control of a foreign APT structure to the clients by allowing them to serve as the manager of an LLC or LP, or even as co-trustee of the trust itself. While this works, it basically doubles down on the optics issues. Each brick you place further removes your options and forces your hand. In my opinion, if you are at the stage that you need a fully foreign APT, then maintaining any control element whatsoever is risky. It's a bit like jumping halfway out of the airplane with your parachute. Either stay in the plane, or jump – not both!

## Reason #5: Continuity

The continuity of your planning may be the most important reason of all. What I mean by continuity is keeping your planning in place, updated and ready to be used for an uncertain time and an uncertain reason in the future. If you don't keep the planning in place – it will not work when you need it.

What I see consistently happening is that clients often call when they are feeling a little bit vulnerable. Sometimes there is a direct risk they are a little worried about. Other times they are witnessing a colleague or friend going through a legal battle. In either case, I often see them get talked into a fully foreign APT by someone because "it's the best". These planners cite law school textbook reasons why they need to be offshore from day one. They do not discuss strategy. They do not discuss tactics. They do not understand the most important consideration of all – flexibility. They simply promote and sell a one-dimensional plan because they have decided it is "the best".

In my opinion, most often when I see this happen it is uninformed and inappropriate – at best, and, at worst, it is an outright abuse of the professional relationship. Why I feel so strongly about this is because a great many of these people drop the planning altogether after 3 or 4 years for precisely the reasons of burdensome costs and compliance requirements.

In the worst of these cases, I have seen planners who sold these plans and failed to even inform the clients of the required compliance. In more than one case I have had calls from people desperate to get out of a 35% penalty of all of their trust assets for failing to file the 3520 on time!

I was speaking with legal counsel for a well-known trust company at a conference in 2015. I asked him what the average life of his fully foreign trusts was. His answer was just what I had guessed from my own experience. He said 4 years!

Why I consider this so devastating is that even after spending tens of thousands of dollars to set up 'the best' foreign plan, it is not going to be there if they ever really need it in the future. My experience has shown that the reasons people create plans are almost never the reasons they use them.

For your planning to work it needs to be in place, up to date and ready to go. Creating a fully foreign APT not only limits your flexibility, massively increases your compliance burden and costs more to boot, but very likely you will get tired of being boxed in and priced out, and you will drop it before you ever need it.

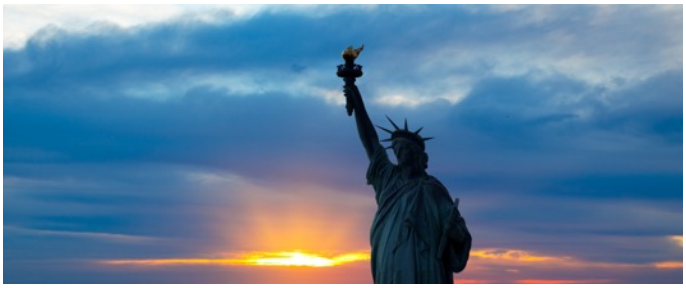
It is a regular call for me to be contacted by someone 2 – 3 years after they have set up an initial offshore plan with another planner. Their question is inevitably:

"Doug I didn't fully understand all of the considerations and I wish I had known about the Bridge Trust® when I set this up. Can you convert my offshore trust to a Bridge Trust® for me?"

Unfortunately, the answer I have to give them is no. Instead I offer to create a new Bridge Trust® for them and help them wrap up their old trust. And the funny thing is that even when they consider that they are going to pay twice for their planning, they still come out ahead in the long run.

**What about a Domestic Asset Protection Trust (DAPT)?**

Many planners have found that going offshore is not always the best first choice. Domestic legislation has also come online in the past 20 years which now allows for an asset protection trust to be created in about 1/3 of the U.S. States including Nevada, Alaska, Wyoming and Delaware to name a few.



This has led more than a few planners to conclude that a DAPT is the solution to going offshore. I believe this has proven to be a dangerous conclusion.

The fundamental strength of the foreign APT is the fact that in The Cook Islands the court is statutorily prohibited from recognizing any other jurisdictions court orders or judicial proceedings. The problem in the U.S. is that the exact opposite is true for the States. Under Article IV Section I of the U.S. Constitution, the states are required to grant "full faith and credit" to the judicial proceedings of every other state.

What this has proven to mean is that as much as Alaska, Nevada or South Dakota would like to serve as protection from a California or New York court order, they simply cannot ignore it like The Cook Islands can.

The proof in this case is really in the pudding as we have already had several high profile cases in which Domestic Asset Protection Trusts have completely failed to protect the beneficiary's assets.

My opinion is that relying on a purely domestic APT is simply unnecessary and dangerous, especially considering that The Bridge Trust® option is available.

**Is there any argument against using a Bridge Trust®**

I believe the case for the Bridge Trust® as a better planning vehicle than a fully foreign asset protection trust or a domestic asset protection trust is compelling. Nevertheless, there are a couple of considerations I hear most often worth addressing.

The first argument I have heard is that a court here in the US may invalidate the trust for any one of a myriad of reasons.

Firstly, I would point out that this is also true for any other trust including a fully foreign or fully domestic asset protection trust.

There is simply no way to ensure that a U.S. court is going to do, or not do, anything as you wish. So I agree, this could theoretically happen (although it has never occurred to any of my clients). If this did happen the question would be, what is the impact.

The answer is that it depends on what tactical moves we have chosen to make. If we have indeed triggered the trust, then a U.S. court invalidating it would make virtually no difference to the effectiveness of the trust.

At that point the Bridge Trust® will have converted to a fully foreign trust and any challenge to the trust must be brought in the High Court of the Cook Islands and proven beyond a reasonable doubt.

What these commentators either fail to understand, or fail to mention, is that for all of the same reasons that the fully foreign APT is going to withstand a U.S. court challenge, so will a Bridge Trust® once it has been triggered because it is then a fully foreign APT.

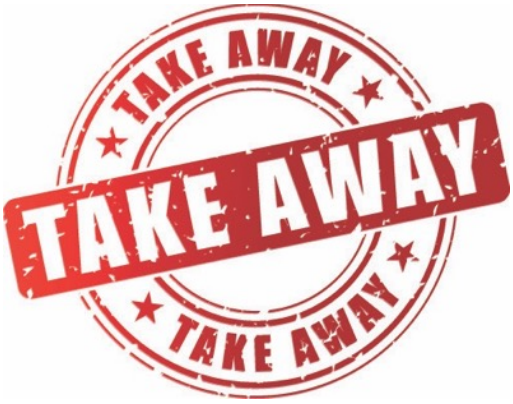
The other argument I hear is that waiting until after the threat has materialized to cross the bridge creates a fraudulent conveyance. This is simply not accurate and a misstatement of the law. The 'conveyance' occurs when the plan is created, and the trust is initially funded, not when the foreign trustee chooses to change jurisdictions of the trust and open accounts offshore, which we consider “crossing the bridge.”

I would agree that creating any plan after the liability has been incurred risks a fraudulent conveyance claim, and careful consideration must be given if that is the case. This would again include both a fully foreign or fully domestic APT as well.

However, if the Bridge Trust® is created and funded before any issues arise, then a later change of jurisdiction and trustee does not create a 'conveyance' for fraudulent conveyance purposes, especially when the changes are pursuant to the terms of the trust itself and not at the behest of a beneficiary or the settlor. Again, any challenge to this would have to be heard in the High Court of the Cook Islands.

What I advise clients who are concerned about doing everything right and by the book, is to focus on keeping ‘the book’ simple and your options open. The Bridge Trust® does exactly that.

## The Takeaway




I do have clients where the asset level is high enough, and the risk is great enough that it makes sense to begin with a fully foreign Cook Islands Trust. In those cases, we strategically consider the circumstances and we carefully and thoughtfully implement a tactical plan that incorporates a fully foreign trust. This often involves funding the trust with a portion of their total estate and sometimes also using the Bridge Trust® in conjunction for other assets.

However, for most of my clients, even very wealthy ones, the flexibility of the Bridge Trust® strikes the right balance between the mitigation of the risks, the costs, the control, the compliance and the ultimate effectiveness of the planning.

In the end, the most important thing is that you are comfortable with your plan and with your attorney and that you and your family sleep better at night because you have confidence that it will work if needed and doesn't tie your hands in the meantime. Be strategic in your planning and tactical in your execution!

Remember it’s your money – act like it!

## About the Author

Douglass S. Lodmell, J.D., LL.M., is the Managing Partner and Co-Founder of Lodmell & Lodmell, P.C. He has authored numerous articles for professional journals as well as a popular book about the explosion of lawsuits in America called The Lawsuit Lottery: The Hijacking of Justice in America.

Doug's extensive experience in asset protection make him a frequent guest speaker at medical, and professional conferences and seminars throughout the country, as well as teaching concepts of asset protection to other attorneys at continuing legal education seminars throughout the country.

A nationally recognized expert in the area of Asset Protection, Mr. Lodmell holds a Juris Doctorate from the Cardozo School of Law and an advanced law degree (LL.M.) in Taxation from NYU School of Law.

## About the Asset Protection Council ™

ASSET PROTECTION COUNCIL™

The APC is a nationwide network of attorneys dedicated to providing effective and proven Asset Protection Solutions. Founded by Douglass Lodmell, Managing Partner of Lodmell & Lodmell, APC members have exclusive access to The Bridge Trust ® and the expertise of Lodmell & Lodmell.