

# Offshore Asset Protection in the Modern Era

PRESENTED BY

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## About Me

Asher Rubinstein's law practice focuses on asset protection, wealth preservation, estate and tax planning, and international compliance. He is widely recognized for his work with offshore structures, foreign banking, and IRS matters. His clientele includes high-net-worth individuals, entrepreneurs, international investors, art collectors, internet and blockchain executives, and financial professionals. Asher advises on cross-border transactions, asset protection structures and IRS compliance, and has drafted asset protection legislation for a foreign government.



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- Questions are welcome at the end, but please do not include any sensitive or confidential information.
- For specific questions about your situation or your legal needs, please contact me privately.

# Offshore Asset Protection in the Modern Era

“Going offshore” used to mean:

- transferring assets to a foreign country to prevent creditors from reaching those assets, and
- hiding assets from the IRS.

However, because of the U.S. Department of Justice successfully suing Swiss banks and effectively ending much foreign banking secrecy, “going offshore” today necessarily involves complete **tax disclosure** while still offering **safety** and **privacy** for assets.

Today, wealthy Americans are pursuing offshore asset protection as a hedge against current worries, including:

- potential government expropriation;
- currency controls;
- economic instability; and
- war.



# Historical Context for Offshore Entities

<b>Pre-2007</b>	For tax avoidance and asset protection. Then, DOJ v. UBS ended banking secrecy. Now, <b>full tax compliance</b> . <b>Confidentiality</b> and <b>asset protection</b> , but no tax secrecy.
<b>2007/2008</b>	Financial crisis. Lehmann Brothers, Bear Stearns. Fear of bank defaults caused people to go offshore.
<b>2008</b>	Obama Presidency. Fear of government confiscation. Argentina-like confiscation of retirement plans.
<b>2024/2025</b>	Trump Presidency. Fear of currency controls. Fear of government confiscations. Economic turbulence. War.

# Why Offshore?

- No recognition of U.S. judgments (exception: criminal judgments, tax proceedings)
- Foreign trustee is not subject to U.S. jurisdiction
- Stable politically
- Stable, regulated banking system
- Solid rule of law
- Little chance of armed conflict
- Difficulties for creditors:
  - have to re-litigate locally
  - no contingency fees
  - have to post bond
  - procedural hurdles
  - favorable local case law, including that:
  - a discretionary beneficial interest is not an enforceable right to trust assets



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# Purposes of a Foreign Trust

- Asset protection
- Geographic diversification
- Ownership of foreign assets, e.g., foreign real estate
- “Nest egg” planning
- Estate planning
- Charitable planning (foreign foundation?)
- Avoids the vulnerabilities of domestic asset protection trusts
- Today: Hedge against Government seizure, currency controls, etc.



# Offshore Asset Protection from the U.S. Government

## Protection against:

- Currency controls
- Seizures of private assets

## The reasons:

- Unsustainable debt
- Tariffs and trade disputes
- Possible foreign war
- Economic calamity
- Authoritarianism

## Historical precedents:

- Radio Act of 1912, Army Appropriations Act of 1919 - nationalized industries and seizure of private property
- Trading with the Enemy Act of 1917 - imposed currency controls and centralized U.S. gold reserves.
- Gold Reserve Act of 1934 - nationalized U.S. gold reserves, including gold owned by individuals.
- Office of Alien Property Custodian (1942) - nationalized American subsidiaries of German and Japanese companies.
- Cold War -- President Truman nationalized railroads, oil companies, transportation, steel facilities, and coal mines.
- Defense Production Act (1950) – President has the power to mobilize domestic industries and resources for national security reasons during emergencies, wars, and crises.

This Act is still in effect. Trump Administration has cited this Act for possible use regarding coal and nuclear facilities.





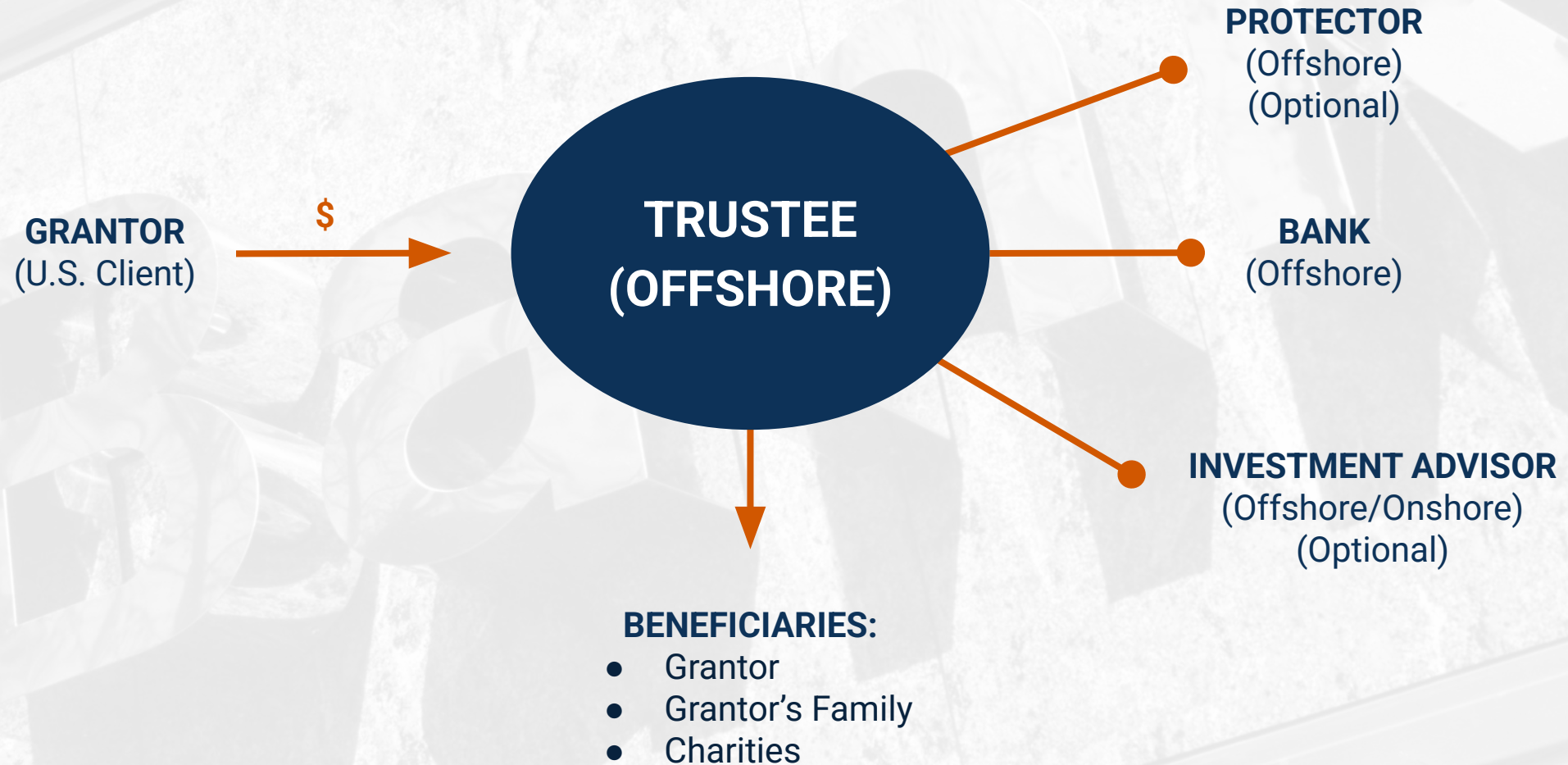
# Offshore Asset Protection from the U.S. Government

To some people, these government actions were long ago and occurred during times of war. To others, they are precedent for the current government to invoke national security concerns and overreach against private citizens and private industry. Fears of a war with China over Taiwan is one particular example.

But note that interest in offshore asset protection is not necessarily partisan or political:

- Interest in asset protection also spiked during the financial crisis of 2007-2008, as many US clients lost faith in US banks and Wall Street, and they sought to protect their money in jurisdictions that offered more stability.
- Interest in asset protection also increased when Barack Obama was elected in 2008, as some people feared government expropriation of private assets, Social Security, and Medicare to fund expansion of federal benefits.
- Some people looked to the 2008 nationalization of pension plans by the Kirchner government of Argentina – also a democracy – as possible in the U.S.

# Parties to an Offshore Trust





# How Do You Trust your Trustee?

- Relationships
- Licensed, insured, regulated
- Trust Deed of Settlement sets forth controls/fiduciary duty to beneficiaries
- Trust Protector
- Well-developed legal system/accountability
- Letter of wishes (non-binding)





# How Do You **Select the** **Best Offshore Jurisdiction?**

- Sovereign and independent
- Long record of political, social, and economic stability
- Legal precedent and maturity of law
- Statutory asset protection, not merely common law
- No corruption
- Long history of governance and administration of trusts
- Robust regulation of banks and fiduciaries
- Banks and trustees are well-established
- Your money should not be a significant percentage of assets under management
- Well-credentialed, international banks
- **But no branches in the U.S.!**
- Not on a “blacklist”



# Offshore Jurisdictions

- Cayman
- Belize
- Nevis
- Cook Islands
- British Virgin Islands (BVI)
- Jersey
- Guernsey
- Isle of Man
- Liechtenstein



# Types of Assets to Send Offshore

- Cash
- Securities
- Digital Assets
- Art

**Not** real estate (Deed to a foreign trust likely ineffective because the real estate remains within U.S. jurisdiction).





# Disclosure Issues

## IRS:

- **Form 3520:**  
Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts
- **Form 3520-A:**  
Annual Information Return of Foreign Trust With a U.S. Owner
- **Form 8938:**  
Statement of Specified Foreign Financial Assets
- **Form 8621:**  
Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund (Maybe)

## FinCEN (Financial Crimes Enforcement Network):

- **Form 114:**  
Report of Foreign Bank and Financial Accounts ("FBAR")

Most offshore trusts are "Grantor" trusts for U.S. Income tax purposes. Grantor (U.S. person) is responsible for reporting and paying U.S. tax on income to the offshore trust!

A dark, moody photograph of a hand holding a pen, writing on a document. The image is partially obscured by a dark blue overlay on the left side of the slide.

## Downsides to a Foreign Trust

- Loss of control – Foreign trustee owns and controls trust assets
- Cost – Initial formation costs, annual trustee fees
- Due diligence/Know Your Client (KYC)
- Compliance costs – accounting, IRS forms

# Questions

- Do you need to leave the U.S. to open a foreign trust or foreign account?
- Once the money is offshore, what happens to it? Can it be invested?
- Can I visit the trustee in person?
- What if I change my mind? Can I bring the assets back to the U.S.?
- Will the government come after me if I create a foreign trust?



# Questions?

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