

## Planning for International Families Using U.S. Structures

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### **Why South Dakota?**

*South Dakota is an ideal location for a trust because of the state's advantageous trust and tax laws, its cost-efficient and dedicated workforce, the founders' previous favorable experience and their market recognition with the state. South Dakota was one of the first states (1983) to allow a trust to endure perpetually, essentially jumping outside the onerous federal transfer (gift, estate and generation-skipping) tax system theoretically forever. South Dakota has joined the ranks of offering a long-term trust as well as allow for a trust to go on in perpetuity.*

*South Dakota can be distinguished by its modern trust laws coupled with the fact that it does not impose any form of state taxation on the assets within the trust (no state income, capital gains, dividend/interest or intangible tax). Additionally, South Dakota has the lowest insurance premium tax of any state (i.e., 8 basis points or 8/100ths of 1%) and offers other very favorable insurance legislation. South Dakota also has excellent self-settled trust and third-party discretionary trust statutes, allowing for excellent domestic asset protection planning.*

*South Dakota was the first state in the U.S. with a discretionary trust statute for asset protection, which states that a discretionary interest in third-party trust, limited power of appointment, and remainder interest are not considered property interests. This statute is important for asset protection trusts set up to benefit one's family. South Dakota also has some of the top rated asset protection statutes for LLCs and LPs based upon a powerful "sole remedy charging order statute". Most of the unique and creative trust strategies for the wealthy involve trust administration in South Dakota without the necessity of having the family reside there.*

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### **U.S. Trust Situs for International Families**

There are many planning opportunities for international families when choosing the U.S., in particular South Dakota, for their trusts and trustees. In utilizing South Dakota situs, many benefits of the U.S. and of South Dakota trust and tax law may be utilized by international families in the implementation of such planning techniques. Below is an outline of the benefits and concepts international families often utilize:

#### **Ownership in Real Estate in the U.S.:**

As a result of favorable buying conditions, many international families are purchasing U.S. residential real estate. For an NRA to own U.S. real estate directly there may be U.S. estate tax consequences. One popular option is to hold the U.S. real estate in a US situs irrevocable trust. This may avoid U.S. estate tax and potential income taxation regarding imputed rent. Moreover, commercial real estate in the U.S. may also involve a U.S. irrevocable non-grantor trust.

#### **Ownership of U.S. Securities:**

Generally, if an NRA has U.S. securities owned by an offshore company that is owned by a South Dakota Foreign Grantor Trust, they are not subject to either U.S. estate taxes or U.S. capital gains taxes. Additionally, there may be favorable

dividend rates. This is a very powerful strategy for NRAs.

#### **Political Stability/Protection of Property from Resident Country:**

Many international families are choosing the U.S. for their trust situs as a result of political instability or lack of protection of property in their resident country. Issues involving forced heirship, blacklisting, corruption, violence/terrorism, or a weak economy in the families resident country may make the U.S. an appealing jurisdiction.

For instance, the resident country of the family may blacklist specific offshore jurisdictions. Generally, blacklisting is legislation or regulations that prescribe negative treatment for certain transactions that involve a specific jurisdiction. Consequently, the U.S. may be a favorable non-blacklisted jurisdiction for the international families.

#### **Forced Heirship:**

South Dakota has a statute that specifically excludes forced heirship claims from a foreign jurisdiction. This may enable clients from a civil law jurisdiction to leave assets in a U.S. trust to beneficiaries of their choice.

### Global Secrecy:

For international families, secrecy may be an important feature. As a result of more significant information sharing programs, the global secrecy wall is falling apart. The U.S. and other foreign jurisdictions are entering into information sharing programs on their citizens. As such, many of the offshore jurisdictions are becoming less appealing for international families looking for secrecy. Consequently, the stability of the U.S. combined with its modern trust laws catering to international families may be more appealing to many international families than an offshore trust based in a less powerful country.

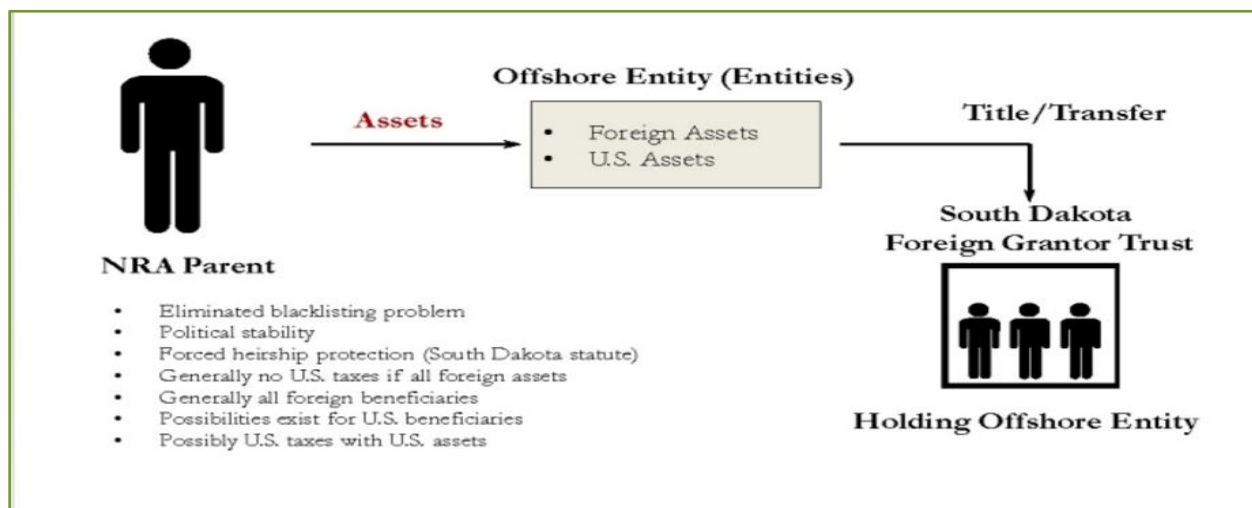
### Improved U.S. Tax and Trust Laws:

Improved U.S. tax and trust laws over the past several years have greatly increased the desirability of international families to use the U.S. as their trust jurisdiction. For instance, NRAs may be able to minimize U.S. taxation, especially if there are no U.S. assets. If there are no U.S. assets in the trust, there is no U.S. income taxation on the trust assets; thus the NRA has all the advantages and the stability of the U.S. jurisdiction (vs. an offshore island) without the taxation. This is a very powerful trend. For more information on the improved U.S. tax and trust laws.

### **South Dakota Foreign Grantor Trusts**

A South Dakota Foreign Grantor Trust is established as a “foreign” trust for U.S. tax purposes and therefore is treated the same as an offshore trust. The benefits of a Foreign Grantor Trust include the following:

- Typically, the trust assets are all in off-shore entities and therefore the trust is not generally subject to U.S. income tax (except for any U.S.-source income).
- The trust is typically revocable and distributions are only to the grantor or grantor’s spouse.
- Upon the grantor’s death, the trust can be transformed to a South Dakota Dynasty Trust to avoid the U.S. income tax on distributions of accumulated income.
- The trust may be funded with other off-shore corporate entities, such as PICs, to avoid U.S. estate taxes.
- The trust may reduce exposure to sovereign risks.
- South Dakota is generally a transparent, non-blacklisted jurisdiction.



South Dakota Trust has been rated the following:

- ❖ ***Rated the Best Trust Jurisdiction in the U.S. by Trusts and Estates Magazine***  
*1/4<sup>th</sup> – 1/6<sup>th</sup>; 1/7<sup>th</sup> – 1/9<sup>th</sup>; 1/10<sup>th</sup>; 1/12<sup>th</sup>; 1/14<sup>th</sup>.*
- ❖ ***Ranks 1<sup>st</sup> in Total Bank Assets: \$2.78 Trillion – Federal Deposit Insurance Corp. (FDIC) 2014***
- ❖ ***#1 Ranked Dynasty Trust Jurisdiction***
- ❖ ***Highest Number of Regulated Private Trust Companies (PTC) and #1 Ranked Regulated PFTC Jurisdiction***
- ❖ ***Highest Ranked Trust Jurisdiction in the U.S.: #1 in all categories by Trusts & Estates Magazine (January 2014)***
- ❖ ***Powerful Trust Legislative Committee – Proactive regarding trust, asset protection and other related legislation.***
- ❖ ***Extremely Supportive Governor, Legislature, Division of Banking and Judiciary***

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