

Why Offshore Protection Is Better

You get the best protection when your assets are offshore for several reasons:

First, asset protection jurisdictions won't recognize or enforce U.S. judgments or administrative orders (such as from the IRS). You have jurisdictional immunity. Of course, no foreign country can ignore every legal order from another country; some countries won't enforce US civil decrees. These are the countries we use for lawsuit protection.

Because these protective countries won't enforce an American judgment or civil decree, the creditor must re-litigate their case within that foreign jurisdiction. But, this is often impractical, if not impossible. For example, the statute of limitations to commence suit within that jurisdiction may have expired. Or the offshore financial center may not recognize the plaintiff's underlying liability claim. The best offshore financial centers impose other procedural obstacles to effectively block creditors and litigation. Asset protection jurisdictions are debtor-oriented. They try to protect their customers' wealth because wealth protection is their business.

These asset protection jurisdictions have special laws that allow you to form unusually protective asset protection structures and entities within their country. Offshore asset protection trusts, limited liability companies, limited partnerships, foundations, captive insurance companies, international business companies, and hybrid companies are examples. Each entity, in its own way, gives you far more protection than you could obtain through a comparable U.S. entity.

Finally, asset protection jurisdictions are also great privacy havens. Though, keep in mind, a good privacy jurisdiction is not always a good asset protection country.

The ultimate advantage from offshore protection over domestic protection is that assets fraudulently transferred to a U.S. entity would be easily recovered through the U.S. courts because the U.S. courts have continued jurisdiction over these assets. An American court has no jurisdiction over offshore assets. This explains why your offshore assets are better protected than U.S.-based assets which remain susceptible to fraudulent transfer claims and other creditor challenges that could be enforced through the U.S. courts.

You never know when someone will sue you on a past claim. Your asset protection plan must withstand a potential fraudulent transfer claim. In many instances, a creditor can persuasively argue that there was a fraudulent conveyance. You avoid this vulnerability and uncertainty with your money offshore.

OFC's can give you enormous debtor protection. Few creditors can overcome the many legal and procedural obstacles. We mentioned their short statute of limitations. For example, an offshore lawsuit must usually be filed within two years from when you transferred your assets offshore. Few creditors file such a timely challenge to an offshore transfer. Another obstacle is that your creditor must prove beyond a reasonable doubt that your transfer offshore was fraudulent - an extremely difficult standard to prove. There are other obstacles. Nevis is a particularly good asset protection jurisdiction. They require that a creditor post a \$25,000 cash bond to cover the defendant's legal fees before the creditor can commence litigation. Another roadblock: the creditor must retain Nevis counsel on a fee-only basis, not a contingency arrangement.

A more formidable procedural obstacle is that an American creditor with a U.S. judgment must nevertheless re-litigate their case within that offshore jurisdiction – and win a judgment from their courts – before the creditor can attempt to recover a fraudulently transferred asset. And the creditor cannot re-litigate the case unless the claim follows rules of liability recognized by that country. For example, your creditor probably could not file discrimination, anti-trust, or one of the many other lawsuits that are based on American law. If so, the creditor cannot re-litigate.

Still other requirements effectively filter most prospective claims against a defendant's offshore assets. While no worthwhile asset protection country would completely disregard fraudulent transfer claims, these financial centers can and do make it exceptionally difficult to pursue such claims.

Another formidable obstacle facing a determined creditor who attempts to recover your offshore assets is that your trustee can relocate your offshore assets to yet another trust or protective entity in another haven. The creditor must then start new legal proceedings in that OFC. This flee provision is found in most offshore trusts. Creditors can tire from the chase as you continuously move your assets between countries and structures. This flee provision, or Cuba clause, is only one more of the many powerful asset protection provisions found in any well-drafted offshore trust. Other provisions can effectively deprive your creditor of any practical opportunity to seize your offshore assets.

These barriers to recovery explain why fewer than 3 out of 100 judgment creditors even attempt to recover offshore wealth. And these few cases are usually settled for pennies-on-the-dollar. Without offshore protection, these creditors would undoubtedly have recovered considerably more. The fact that 97 out of 100 creditors won't attempt to seize offshore wealth strongly endorses the OFC's protective powers.

Many a creditor has the legal right to recover offshore assets as a fraudulent transfer, and yet this same creditor won't attempt recovery only because it's impractical. A creditor can spend enormous legal fees and recover nothing, though the creditor has the legal remedy. Offshore asset protection makes it impractical for all but the most determined creditor to pursue their claim. A creditor's legal recourse indeed becomes academic when your creditor won't assert his remedy.