

MEMORANDUM

Asset Protection

using

Samoan Trusts and Foundations

1. If a creditor proves beyond reasonable doubt that
 - 1.1 the principal intent of the Settlor or of the Founder in creating a Trust or Foundation and disposing of assets to either was to defraud that creditor, and
 - 1.2 the creation of the Trust or the Foundation or the disposition to it rendered the Settlor or Founder insolvent or without property to satisfy that creditor's claim the property transferred is available to meet that claim.
2. Otherwise, if the creation of the Trust or Foundation and the transfer of the property to either took place more than 2 years after the creditor's cause of action arose, the property is protected from any claim by that creditor.
3. Any foreign order or judgment of foreign court will not be enforced by the Samoan court against a Samoan Trust or Foundation for
 - 3.1 the personal and proprietary consequences of marriage or the termination of marriage;
 - 3.2 the succession rights, whether testate or intestate;
 - 3.3 claims or orders made by a foreign court with regard to 3.1 or 3.2 concerning foreign law relating to the Settlor, the Founder or any Beneficiary;
 - 3.4 claims of creditors (subject to the provision set out above which prevent asset protection);
 - 3.5 any claims with regard to the validity of any transfer or disposition of any property into a Samoan Trust or Foundation;
 - 3.6 any claims with regard to the capacity of the Settlor or the Founder; and
 - 3.7 any claims that any foreign law prohibits or does not recognize the concept of a Trust.