

## Case Study: New Trust Review

- This newly created Delaware-situs trust will be initially funded by a Non-Resident Alien grantor, James, who currently resides in London, but is a citizen of Turkey. The trust will be structured as a Foreign Grantor Trust and is revocable during his life. The trust will become irrevocable at his death. The intent of the new trust is to serve as a wealth transfer vehicle for the U.S. based beneficiaries, and provide creditor protection.
- The beneficiaries of the trust are his two children, Maria and Javier, who are U.S. residents with green cards. They are also citizens of Turkey.
- James will serve as the Investment Advisor of the trust during his life.
- In addition, the Trust Protector, Nick Nack, was convicted of a misdemeanor securities crime 20 years ago.
- James has proposed funding the trust with the following assets:
  - Moonraker LLC, a Delaware Limited Liability Company. Moonraker LLC holds various investment properties, both domestic & international. The Moonraker LLC's Operating Agreement states that it is member-managed. Market value is approximately \$10,000,000.
  - Various Turkish bonds, undetermined market value
  - Interests in U.S. hedge funds specializing in gadgets and gizmos for secret agents. Approximate market value is \$5,000,000
- The initial trust agreement presented for review contains the following provisions:
  - Nick Nack, who retains various administrative powers, will serve in a non-fiduciary capacity.
  - The Delaware Trust Company will have sole distribution authority. The distribution standard used is "sole and absolute discretion", but provides a caveat that forbids making distributions to any beneficiary that is "known to be engaged in gambling".
  - Trust has non-notification provisions. The non-notification provision states that any current beneficiary is not to receive any notification of the trust's existence from the Delaware Trust Company for a period of 40 years after the creation of the trust.
  - Mandatory distribution provision directing the Delaware Trust Company to distribute specific real properties held directly by Moonraker LLC to certain beneficiaries upon James' death.
  - Provisions requiring the Delaware Trust Company to keep any residence that would be held directly by the trust adequately insured, and to pay all real estate taxes for the property.