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ASSET PROTECTION FOR HIGH NET WORTH INDIVIDUALS IN MEXICO

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Agenda

- Asset Protection - An Afterthought in Wealth Planning?
- Naive Asset Protection
- Domestic Protection
 - Assets protected from Seizure or Garnishment
 - *Patrimonio Familiar*
 - Renta Vitalicia
 - Usufruct
 - *Fideicomisos*
 - *Acción Pauliana*
- Matrimonial Regime Considerations
 - Migrant Clients
 - Community Property
 - Conflicts of Laws
- Offshore Asset Protection



Asset Protection

- Protection of current and future assets from potential, future, unknown liabilities
- Main focus on wealth planning in Mexico:
 - Domestic Tax Considerations (Deferral)
 - Foreign Tax Considerations (Inheritance Taxes)
 - Confidentiality
 - Succession Planning



Naive Asset Protection

- Assets in Spouse's Name
- Transfers once Liabilities Arise
- Circular Protection



Domestic Protection: *Patrimonio Familiar*

- Formally creates a “family estate” protected by law
- Subject to low monetary limits
- Burdensome formalities
- May not be seized or garnished



Domestic Protection: *Renta Vitalicia*

- Lifetime annuity under family law
- Established through gift or testament
- May not be seized or garnished



Domestic Protection: *Usufruct*

- Civil law distinction between *ius utendi*, *fruendi*, and *abutendi* in property rights
- May be established as a lifetime right
- May not be seized or garnished

Domestic Protection: *Fideicomiso*

- Civil law contract similar to a trust
- Creates a separate estate (*patrimonio*) for legal purposes
- Assets granted in *fideicomiso* may only be destined to the specific ends of the *fideicomiso* and may not be attacked by creditors of the grantor or beneficiaries



Acción Pauliana

- Applicable to assets disposed of or transferred in an attempt to defraud current creditors and resulting in insolvency
- Clawback of any such assets to satisfy existing liabilities
- Potential for criminal charges

Matrimonial Regime

- Subject to local (State) law
- Personal Property vs. Community Property
- Migrant Clients may be subject to different matrimonial regimes
- Pre-immigration planning necessary
- Very complex matters of conflict of laws



Offshore Asset Protection

- Foreign legal contracts and arrangements are generally valid
 - Against “public interest”
 - Foreign insurance
- Parallels with planning to achieve tax deferral
- Presumption of control on tax matters
- Subject to clawback if Mexican court has jurisdiction
- Subject to clawbacks in offshore jurisdiction





iGRACIAS!

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