



ASSET
PROTECTION
COUNCIL®



MAINTENANCE & TAX REPORTING INFORMATION FOR YOUR BRIDGE TRUST®

Letter of Wishes and Directives to the Trustee

A Letter of Wishes to the Trustee principally sets out the manner in which the Settlor(s) (you) wishes the Trustees to exercise their powers and discretions, such as to distribute certain items of property to selected beneficiaries, to leave special instructions about your Trust, or to clarify your wishes. However, Letters of Wishes are not binding on the trustees. Thus, the trustee will follow your wishes unless the terms of the Trust direct otherwise, such as the occurrence of an Event of Duress.

A Directive, in contrast, is a specific exercise of the Settlor(s) Power of Appointment, which is binding on the Trustee. However, this power also has restrictions for the protection of the Trust Assets, which exclude directives to make bequests to your creditors, creditors of the estate, or any Excluded Beneficiary.

Blank "Letters of Wishes to the Trustee" and "Directives" are included in your documents. Make photocopies of these forms before filling them in, so that you'll always have blanks available for future use.

Certificate and Notice of Declaration of Trust

When you are called upon to act as Trustee, like opening a new account or acquiring a new investment, you may be asked for a certified copy of your Trust. Many times, the institution will ask for the "first and last pages" of the Trust. This document is used by a financial institution to verify that it is a legal Trust and that it is dealing with a proper Trustee.

Rather than producing a copy of your entire Trust, we have copied the relevant portions of public interest and attached a Certificate & Notice of Declaration of Trust. You may provide this to a financial institution in full confidence that your privacy will be maintained.

You should deliver this original Certificate of Trust to those who request it and let them make a copy of it for their records. Remember to place the original back in this section. If you are dealing with an institution from a distance you may make and provide them a copy of the Certificate of Trust pages, a copy of the first and last pages of your Declaration of Trust and a copy of the Trustee Powers.

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Affidavit of Accuracy and Solvency

When creating any legal entity, or transferring money or property, it is a criminal offense for anyone to conduct or attempt to conduct certain financial activities which involve the proceeds of unlawful activities. A transfer of assets must also not be an attempt to avoid payment of legal obligations arising from contracts or as a result of legal action.

It is essential that you read carefully and sign the affidavit of accuracy and solvency. The Settlor(s) must sign and have witnessed a separate copy of the affidavit. If you have any questions at all, please consult our office before signing these documents.

Bridge Trust® Tax Information Reporting

A Bridge Trust® is a domestic grantor trust and, as such, has no filing requirements until it is triggered when it then becomes a foreign grantor trust.

For filing purposes, a SSN will used, unless international accounts are opened or the trust is triggered. If triggered, Form 1041 is required. A TD90.1.1 also must be filed if any assets are transferred outside of the U.S. (If you need an EIN follow the instruction and sample SS4 form listed in this booklet.)

Once triggered, you will need to file several other documents annually, details of which are prepared with every Bridge Trust® by Lodmell & Lodmell.

IRS Reporting Requirements Advisory for Foreign Trusts

Your Bridge Trust® is considered a **domestic (i.e. non-foreign) Grantor Trust**. As such, unless your Trust is “triggered” you may not be required to file the following forms; however, once triggered, your Trust will be considered foreign. While in most cases the funding and triggering of a Bridge Trust® should be tax neutral, attention to the potential dangers of ignoring IRS requirements is vital.

Following is a summary of some of the reporting requirements of the United States Internal Revenue Code. We at Lodmell & Lodmell, P.C. advise you to comply with U.S. tax laws and the reporting requirements when applicable. **We advise you to associate with an accountant who may give specific guidance as to your specific requirements and is competent to fulfill all of the reporting and filing requirements of the IRS.**

Form 3520 If your Bridge Trust® is “triggered” it may be deemed a foreign Trust for tax purposes and may be required to file a Form 3520. A foreign Trust is any Trust other than a domestic Trust. A domestic Trust is any Trust if: (a) A court within the United States is able to exercise primary supervision over the administration

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of the Trust, and (b) One or more U.S. persons have the authority to control all substantial decisions of the Trust. Therefore, if an alternate jurisdiction is selected for your Trust and a non-U.S. person is chosen to serve as the primary Trustee, then you will be subject to the Form 3520 filing requirements. It is important to note that this form must be filed within 90 days after these events occur.

NOTE: PENALTIES FOR FAILING TO FILE THIS FORM ARE SEVERE, DO NOT DISREGARD!

Form 3520A If a foreign Trust has one or more U.S. beneficiaries, then the U.S. Grantor must file a Form 3520A annually by the 15th day of the fourth month following the end of the tax year of the Grantor.

NOTE: PENALTIES FOR FAILING TO FILE THIS FORM ARE SEVERE, DO NOT DISREGARD!

Form 926 This form is required of all persons making transfers of appreciated property to a foreign Trust, corporation or partnership for less than adequate consideration.

Form 5471 When a U.S. citizen acquires a 5% or greater interest in a foreign corporation the U.S. citizen or resident must file a Form 5471 disclosing his or her ownership interest.

FinCEN 114 This form must be filed annually by every U.S. person who has an interest in a foreign financial account. If the account is maintained by a foreign Trust, this form must be filed by any U.S. person who has a beneficial interest in Trust income. This form is required even if only oral authority is exercised over the account.

Form 4790 This form must be filed by each person who physically transports, mails, ships or causes the same, currency or other monetary instruments exceeding \$10,000.00 on any one occasion into or out of the U.S.

Form 1120F Every foreign corporation which is engaged in a trade or business in the U.S. must file this form annually.

Form 6660 Every foreign corporation which owns U.S. or Virgin Islands real estate must file this form annually. (see IRC section 6039 (c) for details)

Form 709 A form 709 must be filed to report transfers to a donee even though the transfers are not completed gifts. This applies to direct or indirect transfers or transfers made through a Trust.

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- Form 1040** Each year the grantor must report all of the income of the Bridge Trust® on his or her individual form 1040.
- Form 1040NR** If the Trust is a foreign Trust for federal income tax purposes (see Form 3520 above) the Trustee should report income on form 1040NR.
- Form 1041** Each year the grantor must report all of the income of the Bridge Trust® on his or her 1040 tax return. A Grantor Trust may generate income that must be reported on Form 1041, United States Income Tax Return for Estates and Trusts. However, if trust and estate beneficiaries are entitled to receive the income, the beneficiaries must pay the income tax rather than the trust or estate. At the end of the year, all income distributions made to beneficiaries must be reported on a Schedule K-1.
- Form 8300** Any person, who in the course of his or her trade or business receives more than \$10,000.00 in cash or foreign currency must report the transaction to the IRS. This may apply to a foreign entity that is a grantor Trust for income tax purposes.
- Form 4789** Transfers of monetary instruments made through or by a bank (or other financial institution) in the amount of \$10,000.00 or more are reported by the bank to the Department of Treasury on IRS form 4789.
- Form 8938** Ownership of specified foreign assets must be reported on form 8938. Such assets include foreign financial accounts, foreign stocks, interests in foreign entities, and any contracts where the counterparty is not a U.S. person. If you already file form 3520, form 5471, form 8621, form 8865, or form 8891, then you only need to indicate that fact on Form 8938 rather than completing the entire form.

A NOTE ON FATCA

The provisions commonly known as the Foreign Account Tax Compliance Act (FATCA) became law in March 2010.

- FATCA targets tax non-compliance by U.S. taxpayers with foreign accounts
- FATCA focuses on reporting:
 - By U.S. taxpayers about certain foreign financial accounts and offshore assets.
 - By foreign financial institutions about financial accounts held by U.S. taxpayers or foreign entities in which U.S. taxpayers hold a substantial ownership interest.
- The objective of FATCA is the reporting of foreign financial assets; withholding is the cost of not reporting.

Please be aware that FATCA is an evolving set of requirements and currently include FORM 8938 and FinCEN Form 114 it is likely that more requirements will be added. Please advise your CPA to monitor this annually as you determine your own filing requirements.

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Finally, for a transfer to a Bridge Trust[®] to be fully effective it must not violate the applicable Fraudulent Transfer or Voidable Transaction Laws. The Bridge Trust[®] may not hinder the efforts of existing creditors, even those whose claims may not be fully matured. If the transfer to the Bridge Trust is determined to be fraudulent, the grantor may face penalties. Please consult our office if you have specific questions.

IRS Circular 230 Disclosure

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this document is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any matter addressed herein.

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