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How Non-U.S. Creditors Can Reach Delaware Trust Assets

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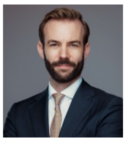

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Delaware Domestic Asset Protection Trusts (DAPTs) offer strong statutory protection when properly structured. However, non-U.S. creditors may still pursue recovery through multijurisdictional strategies, including challenges to the validity of the trust, reliance on creditor-friendly jurisdictions, and fraudulent-transfer claims.

Delaware DAPTs continue to offer strong protection for settlors and beneficiaries. However, recent developments indicate that non-U.S. creditors may still find avenues to challenge DAPTs and overcome protections through a strategic, multijurisdictional approach.

Under Delaware's Qualified Dispositions in Trust Act, self-settled trusts can shield assets from creditors where statutory requirements are satisfied, including irrevocability, Delaware situs, the appointment of qualified trustees, and the inclusion of spendthrift provisions. Recent case law—such as *In the Matter of the CES 2007 Trust* (May 2025)—confirms that Delaware courts will uphold DAPTs where these criteria are properly met, rejecting arguments that spendthrift protections or trustee discretion are insufficient.

That said, non-U.S. creditors may still seek to challenge DAPTs through a range of strategic avenues, including:

- **Attack the Validity of the Trust.** There are statutory requirements to establish a DAPT, which, if violated, allow creditors to challenge it as invalid. These include requirements that the trust must be irrevocable, that specific provisions must be included in the trust instruments, and that at least one trustee, part of the trust's administration, and some of the trust's assets must be in Delaware. Courts also scrutinize settlor control and trustee independence, and a failure to demonstrate a legitimate planning motive, such as estate or tax planning beyond asset protection, can increase the likelihood of a successful challenge.
- **Access Through a Creditor-Friendly Jurisdiction.** Some U.S. states do not recognize DAPTs. If there is a connection between the trust and one of those states, a creditor can persuade the state's courts to reach the assets of a Delaware DAPT based on public policy or other grounds. For example, courts in Utah, Washington, and Illinois have pierced DAPTs to allow creditors to reach assets belonging to the trusts. Creditors evaluating this strategy should examine any multistate connections, including asset location, administration, or trustee residency, to identify potential leverage points.

- **Bring a Fraudulent Transfer Claim.** Creditors may assert that transfers to the trust were intended to hinder, delay, or defraud them. Delaware law allows trustees to use trust assets to defend the trust and gives them priority for defense costs, but proof of bad faith or intent to defraud can overcome the trustee's ability to use trust assets to defend such actions. Proper documentation and compliance with statutory requirements are critical, and courts increasingly weigh the legitimacy of the settlor's motives when considering such claims.

The attractiveness of Delaware's trusts makes the state a repository of debtor assets and, correspondingly, a potential source of high returns for creditors. They should not be intimidated by the trust's fortress — a creative, multijurisdictional, and carefully planned approach that considers statutory compliance, trustee independence, and legitimate planning motives can give creditors a path to challenging DAPTs effectively.

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- Consists of experienced trial litigators in the Delaware Court of Chancery and U.S. Bankruptcy Court for the District of Delaware who focus on complex commercial disputes;
- Provides offensive and defensive cross-border litigation and crisis management strategies in and out of court;
- Has deep experience tracing and recovering misappropriated funds and defending against asset attacks.