



## TL4 X-OVER CASE STUDY

1. Ms Strudel is a wealthy woman, living in Hong Kong. Her money derives from the family business which specialises in political polling.
2. In 2010 she decided to settle a trust (“the Arizona Trust”). At this time she was unmarried and had no children. She did so in New Zealand, choosing a friendly solicitor and a business associate as her trustees. The beneficiaries of the Arizona Trust are her siblings, plus any future spouse and children of Ms Strudel.
3. The pertinent provisions of the Arizona Trust are set out in the attached Schedule. The assets were originally £50m in cash, which have been invested in a £20m property in London and in investments managed out of Guernsey. There is a BVI company interposed between the Arizona Trust and its assets.
4. In 2012, Ms Strudel moves to London. She occupies the property owned by the Arizona Trust. She also establishes, personally, her own polling company (Overweighted Limited) using funds from her free estate. She receives all the income generated by the Arizona Trust’s investments, as well as a salary from Overweighted. She retains personal assets in Hong Kong.
5. In 2015, Ms Strudel becomes engaged to a long term family friend. She enters a pre-nuptial agreement with her fiancé to govern the treatment of assets in the event of divorce. They get married.
6. In 2017, having made wholly inaccurate predictions regarding the Brexit referendum and the 2016 US election, Overweighted starts to fail. It is unable to pay its suppliers and attempts a restructuring.
7. Seeing that Overweighted is bound to fail, Ms Strudel takes steps to transfer assets out of the company.
8. At this time (2018), Ms Strudel and her husband decide to enter into a divorce with the bulk of the personal assets passing to the spouse following the parties agreeing terms which were subsequently approved by the court in the form of a Financial Consent Order.
9. Overweighted is sued by its suppliers, who appoint an insolvency practitioner and seek to bring personal claims against Ms Strudel. Some such suppliers benefit from personal guarantees.
10. Ms Strudel is made bankrupt in 2019, and the trustee in bankruptcy reviews her asset position and in particular:
  - a. The question of matrimonial assets and the status of the divorce;
  - b. The trust assets (Ms Strudel having been excluded as a beneficiary at her request in 2018);
11. The trustee in bankruptcy seeks to gather in Ms Strudel’s personal assets including, they argue the assets of the Arizona Trust. They also seek to recover the assets recovered from Ms Strudel’s spouse under the divorce.



## SCHEDULE

The trust is stated to be discretionary, and the pool of objects include Mrs Strudel, her siblings, her spouses or future spouse, and their children and remoter issue.

In case she needs to access the funds quickly, she decides to include a power of revocation in the trust instrument:

**“This Trust may be revoked, amended, varied or altered in any manner whatsoever from time to time and at any time by the Settlor by deed and delivered to the Trustees provided always that no such revocation, amendment, variation or alteration shall take effect until actual receipt of such instrument by the Trustees or with the written consent of the Trustees thereto if such revocation, amendment, variation or alteration would increase or extend the obligations, liabilities or responsibilities of the Trustees”.**

She also includes substantial reserved powers in the trust instrument for herself as Protector including powers to:

- **veto the distribution of income or capital from the trusts;**
- **veto the investment of the trust funds;**
- **veto the removal of beneficiaries;**
- **veto any variation to the trust deeds;**
- **veto the early termination of the trust period;**
- **appoint and remove trustees, with or without cause;**
- **add further beneficiaries and adjust the beneficial class so long as at least one member of the prior class remains;**
- **veto an amendment to the trusts by the trustees.**

The Deed further contains a provision that **“the Protector shall be entitled to act as such and to exercise all of their powers and discretions notwithstanding that the interests or duty of the Protector in any particular matter may conflict with his duty to the Trust Fund or to any Beneficiary”.**

The Trustees, with the consent of the Protector, can remove beneficiaries from the class.