

Selecting the "Right" Offshore Jurisdiction

"These days man knows the price of everything but the value of nothing..." - Oscar Wilde



Most offshore jurisdictions are free from foreign exchange controls and have tax-free and simple company legislation to cater for a diverse range of international business requirements. The most common reasons that businesses and high-net worth individuals consider using an offshore company is for:

- 1. Asset / Investment Protection**
- 2. Confidentiality and Financial Privacy**
- 3. Reducing Tax Liability (Personal or Corporate)**
- 4. Estate Planning**

All of the above are valid reasons for you to consider owning an **offshore company** - but **WHICH jurisdiction?** We have encountered numerous cases whereby the clients were previously recommended the wrong jurisdiction for their business or personal objectives. Hence, they ended up having to incur additional and unnecessary costs to rectify an error of judgment by the company incorporator.

Our team of **Company Formation Specialists** pays close attention to the needs of our clients and prescribes the most suitable jurisdiction after considering the following factors:

1. Tax Treaties/No Tax

Unless your offshore company is specifically set-up for international trading with the intention of taking advantage of the double taxation treaty in jurisdictions such as Labuan and Mauritius, it is not necessary to incorporate in a jurisdiction that has a tax treaty.

2. Legal System & Compliance

For those with a familiarity of English Common Law and appreciate its reliability, there are many suitable offshore jurisdictions to choose from, including **Seychelles, BVI, Anguilla** and **Samoa**. For others who are comfortable with Napoleonic Code inspired civil law, jurisdictions such as Aruba, Antilles and Costa Rica may be more palatable. However, civil law jurisdictions such as these, and **Panama**, are most unsuitable for setting up a trust.

3. Time Zone of Jurisdiction

How important is it for you to be in a similar time zone to the offshore jurisdiction so that you can contact the agent and effect changes/relay information? Indeed, e-mail is an effective way of getting around the time barriers, but for urgent matters, international phone calls may require rising before the blackbird's song.

4. **Set-up Cost, Maintenance & Professional Fees**

For some clients, cost is a major factor in their choice of **offshore jurisdiction**, for others it weighs lightly in the overall consideration. In addition to the incorporation cost, there is also the annual maintenance costs, and more importantly, professional legal fees - which can certainly build up when subsequent advice and transactions are required.

Incorporation Costs

In respect to incorporation costs alone, there is quite a wide variance in government fees and agent fees - with some a few hundred dollars (USD), and others such as **Mauritius** with double taxation treaties, costing a few thousand to set up.

Company Officers & Fiduciary Fees

Although all IBC's allow you to incorporate with foreign individual/Corporate Director and Shareholders, some jurisdictions require the company secretary to be a local resident, which will involve additional payment to the offshore agent. Additionally, should you opt for a further level of privacy, you may wish to engage the services of a **Nominee Director** and **Nominee Shareholder**.

Maintenance Fees

License fees are payable to the offshore government on a yearly basis, and also to the offshore agent and for use of the registered offshore address. Again, prices do vary, and in the BVI where bearer shares are being phased out, any company retaining bearer shares in its Memorandum and Articles of Association (**M&AA**) will be required to pay higher license fees and custodian fees.

Professional Fees

Depending on the type of offshore vehicle required, such as a Trust, professional legal and international tax planning expertise might be necessary. As a general rule of thumb, professional fees for tax planning (which includes drafting of service agreements and contracts) range from USD\$3,000 to USD\$10,000. For setting up a private equity fund, for example, you will need to put aside USD\$30,000 (including offshore incorporation and license fees). Subsequent advice will be based on time cost, and as international legal firms in these jurisdictions tend to monopolize, the fees can be quite substantial (USD\$500 per hour). To minimize on costs, you may wish to involve us as your intermediary consultant.

5. **Confidentiality**

Most offshore jurisdictions practice non-disclosure with regard to information on company officers and shareholders, with some jurisdictions such as Cayman having a Confidentiality Ordinance or Act. Whilst company registers must be updated and lodged with the offshore registrar, the information will not be released to third parties except when subpoenaed by international law authorities.

Bank confidentiality also plays an important role in the **offshore company structure**. Although complete privacy is impossible, as all banks have very stringent due diligence procedures, once bank accounts are opened, your **confidentiality** is usually protected under the jurisdiction's applicable statute. Furthermore, using **nominee** shareholders/directors can attain an extra layer of **financial privacy** between the public and the beneficiary.

6. **Reputation & International Profile, Government Stability**

There are pros and cons for high and low profile jurisdictions. For high profile jurisdictions such as the Bahamas, **Cayman** and Bermuda and well-accepted jurisdictions such as **BVI**, it is certainly easier to open an offshore bank account, get listed on the stock exchange and enjoy the business infrastructure in place. However, on the downside, name availability (both shelf and new incorporations/name conversions) is quite limited and the annual fees for companies of such jurisdictions are markedly higher than lesser-known competitors such as **Anguilla**. Interestingly, high profile vs. low profile seems to be largely implicated by 'status factor' and less in respect to government stability. Often, low profile jurisdictions share the same legislation and governance (and white sandy beaches!) as high-profile jurisdictions.

