

Maximize Growth Potential by Incorporating Offshore

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Every day, companies are being formed around the world for a variety of reasons. Incorporation produces a corporate entity which is separate from its owners, with its own legal rights and obligations. A company can enter into contracts, buy, sell and own goods and other property, incur liabilities, as well as initiate or be the recipient of legal action. There are distinct advantages in choosing incorporation over other models of business ownership such as sole proprietorships or partnerships. Where international transactions are involved, consideration of the use of an incorporation jurisdiction which provides clear laws, maintains high international standards accepted by investors, with professionals to support the jurisdiction and tax neutrality will also be highly important.

Key Advantages of Incorporation

A company has many more options at its disposal when it comes to raising capital. These range from debt capital such as bank loans, lines of credit and bonds, to equity capital such as private share issues and public offerings. As a rule, banks are more disposed towards corporate borrowers; the better a company's governance and business performance, the higher its chances of securing favourable loans. Further, the relative ease and efficiency with which ownership of a company can be transferred – namely through a transfer of its shares – make corporations an attractive vehicle to individual and institutional investors.

Another notable advantage of forming a company over a sole proprietorship or a partnership is the company's perpetual survival. A company's lifespan is not confined to that of any particular individual or individuals; it can continue indefinitely unless and until it merges with another, accomplishes its pre-set objectives, or goes into liquidation.

Because of the company's independent legal identity and existence, this means a company's owners or shareholders are protected from personal liability for the company's debts and obligations. The shareholders liability is restricted to the maximum amount of capital they have contributed to the company, as evidenced by the shares they hold. Furthermore in the event of litigation, the personal assets of the company's shareholders are safeguarded from any legal judgement rendered against the company by virtue of the recognition that a company is a separate legal entity.

Incorporation thus offers a sound vehicle for owners to operate and develop a business, as well as for investors to participate in international trade and finance.

Embarking on the Incorporation Journey

Choosing the place of incorporation

When forming a company, one of the foremost considerations is where that company will be registered.

If properly structured, a company formed in an international finance centre (IFC) such as Bermuda, the British Virgin Islands, the Cayman Islands or Mauritius can create many potential benefits including:

- Low capital requirements – companies formed in IFCs enjoy flexibility in the structuring of their capital. Usually a minimal amount of capital is required to set up a company; some jurisdictions have no minimum paid up capital requirements.
- Ease of incorporation and maintenance – it is relatively simple to set up and maintain a company. In many IFCs, the process of company formation is quick and seamless. Furthermore, service providers specialising in providing corporate services are often able to provide incorporation and administration services at very reasonable fees due to economies of scale and automated operating systems. After it is formed, a company formed in an IFC also benefits from more flexible regulations in terms of accounting and public filing requirements.
- Tax optimization – companies formed in IFCs are often tax exempt in the country of incorporation, or they are subject to a low or nil effective rate of tax. To qualify, the company will typically be subject to certain restrictions prohibiting it from conducting business in the country of incorporation. It follows that revenue which is derived outside such company's place of incorporation, is either not taxed at all, or will be taxed at a very low rate in the company's place of incorporation.

However, in many cases it is important to seek professional advice before simply proceeding with an incorporation. Every IFC has its unique rules and regulations governing the formation and ongoing administration of offshore companies. These rules and regulations can have different ramifications on the taxation, financial and other legal requirements affecting your business structures. It is advisable to obtain expert guidance to ensure that you select the jurisdiction which best suits your overall business needs.

Finding a service provider

Alongside the decision to incorporate is the choice of whether to engage a third party service provider or to form the company on your own. The former covers a wide spectrum, ranging from online incorporation services agents that provide shrink-wrap incorporation packages at the one end, to conventional law firms offering bespoke services at the other, and with a multitude of corporate services providers in between.

While different business situations and commercial exigencies can affect your choice, in general engaging a corporate services provider to form a company has the following benefits:

- Due compliance with registry and/or regulatory requirements. A professional service provider will not only relieve you of the time- and effort- intensive process of ploughing through the incorporation documentation, completing numerous application forms and collating the requisite supporting paperwork, but also ensure that proper steps are taken to avoid the risk of non-compliance.
- Timeliness in meeting deadlines. A failure to comply with timeframes or deadlines can, and will, delay the incorporation process, and may even incur fines. All this will increase the total cost of the company formation.
- Fast turnaround. Reputable service providers that deploy secure and automated systems, coupled with their industry knowledge and expertise, can deliver a prompt service and companies can often be formed in a day or two.
- The above considerations become more relevant when you plan to form a company in a jurisdiction other than where you or your business is situated. Because no two markets are the same, forming a company overseas can be a complex affair as you navigate the different rules, requirements, language and local nuances of another jurisdiction.

For example, there may be residence requirements for a company's directors or officers; a company may also have to appoint a registered office provider with a physical address in the jurisdiction of incorporation. The last thing anyone wants is to be mired in unexpected local bureaucracy and paperwork as the incorporation costs continue to escalate, frustrating the initial hopes of business growth.

This is where the expertise of a [professional corporate services](#) provider will prove invaluable. A corporate services provider can offer the benefits of experienced staff including company secretaries, paralegals and even lawyers, all with intimate knowledge of their specific jurisdictions' requirements. In addition, they maintain regular and direct contact with their local regulatory bodies (e.g. registry of companies, financial services regulators), so that they can keep abreast of, and comply with, any changes in local laws or regulations.

Complying with AML, KYC, due diligence requirements

Nowadays governments, regulators and law enforcers around the world impose stringent compliance requirements aimed at countering money laundering, terrorist financing and financial fraud. Anti-Money Laundering ("AML") and Know Your Customer ("KYC") norms are in place globally which mandate that corporate service providers, particularly those with an international presence, must ensure that the people they do business with are operating in a lawful and compliant manner.

Accordingly, before taking a new client on board, a corporate service provider has to conduct various due diligence and verification checks on the prospective client's identity as well as such client's source of funds. Customer due diligence includes, but is not limited to, checking:

- Whether there are sanctions imposed against them
- Are they presently on any watch lists
- Are they considered Politically Exposed Persons

KYC procedures also necessitate verification checks on an individual's photo identification (usually passport), proof of residential address (driver's licence or utility bill), and understanding their source of wealth. For corporate clients, the Ultimate Beneficial Ownership of such client must be determined, usually via certification of copies of company records. Beneficial owners who hold above a threshold percentage (usually 10%) of a company's shares have to be identified and verified.

While all this means that before actual incorporation can take place, a fair volume of client information has to be collected, screened, verified and filed, it is not as disheartening as it seems. KYC has evolved to be a formalised and streamlined process across industries and markets. In the corporate services arena, standardized norms and requirements, together with increasing IT systems automation, have helped to alleviate the burden of KYC compliance.

When engaging a corporate services provider, it is highly recommended to select one with a sound track record of providing compliance expertise and professionalism. A quality service provider who can manage AML and KYC processes efficiently and effectively, will enable clients to avoid delays to the incorporation and on-going compliance procedures. At the end of the day, legitimate clients should not be dissuaded from continuing with the incorporation application because of lengthy and painstaking KYC procedures.

CONCLUSION

It follows that although there are numerous benefits in forming a company, careful consideration is needed before embarking on the journey to incorporation. Partnering with a [professional service provider](#) can help you find the right type of corporate entity and the ideal jurisdiction in which to incorporate, at the same time giving you cost effective support throughout the process of incorporation and ongoing maintenance.

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