

**UTLANDSJURISTEN**

**Utlandsjuristen Malmström  
& Valdemarsson**

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# 1. About Utlandsjuristen Malmström & Valdemarsson

Utlandsjuristen's core business is setting up and managing companies, trusts and other international financial structures, to meet the specific personal or business needs of our clients. Typically these include optimising arrangements for successful tax planning, wealth protection, foreign property ownership and facilitating cross-border business.

We currently manage over 6,000 structures for a wide variety of clients. We advise businesses and professional law and accountancy firms, but the majority of our clients are individuals, be they expatriates, entrepreneurs, freelance consultants, private investors, or wealthy persons and their families.

We have also developed a wide range of supporting services embracing asset management, corporate finance and fund raising, specialist tax advice, ship and yacht registration, debit and credit cards, as well as trademark and intellectual property protection.

Utlandsjuristen opened in Gibraltar in 1985 and, since 1993, has been a part of The Sovereign Group which has offices or agents in all the major international finance centres. This global reach enables us to provide local expertise on an international scale and allows our clients access to a global service from a local point of delivery. It also means that, in most cases, business can be conducted in the client's first language. The Sovereign Group currently operates in:

- **Bahamas**
- **British Virgin Islands**
- **Cyprus**
- **Denmark**
- **Germany**

- **Gibraltar**
- **Hong Kong**
- **Isle of Man**
- **Malta**
- **Mauritius**
- **Netherlands**
- **Portugal**
- **Singapore**
- **South Africa**
- **Spain**
- **Switzerland**
- **Turks & Caicos Islands**
- **United Arab Emirates**
- **United Kingdom**
- **Uruguay**
- **United States of America**

Further offices will be added whenever and wherever client demand dictates.

At a time when regulation and supervision has risen to the top of government agendas, Utlandsjuristen is committed to ensuring that its compliance and legal obligations, and those of its clients, are met. Not all the jurisdictions in which we operate require licences but, wherever this is the case, Utlandsjuristen or Sovereign has applied for, and been granted, the appropriate authorisation. To achieve this, we have had to demonstrate our financial stability and probity, as well as the professional competence and integrity of staff.

This brochure is intended as a general guide to the Utlandsjuristen Malmström & Valdemarsson/Sovereign Group and its services. Contact details for Utlandsjuristen are listed on the last page of the brochure. An initial consultation can be given without fee or commitment. Should you choose to proceed, we will provide accurate time and cost estimates before undertaking any work on your behalf.

Please also visit our web site at [www.ujoffshore.com](http://www.ujoffshore.com) which contains updates to this information together with other items that may be of interest. You may also wish to subscribe to *The Utlandsjuristen Report*, a quarterly newsletter providing news and comment on issues affecting international tax planning.

## 2. The Utlandsjuristen Service

Utlandsjuristen's aim is to understand and assess our clients' specific needs and goals, and then to design and implement a solution that both maximises the available benefits and minimises the potential risks.

**Utlandsjuristen provides:**

- **Company Formation and Management Services**
- **Trust Creation and Trustee Services**
- **Corporate Structuring**
- **Redomiciliation**
- **Accounting and Auditing**
- **Custodian Services**
- **Legal Services**
- **VAT Structuring**
- **International Tax Planning**
- **Private Wealth Planning**
- **Overseas property ownership**
- **Immigration and Residency**
- **Banking Introductions**
- **Compliance**
- **Asset Management**
- **Fund Formation and Administration**
- **Corporate Finance and Fund Raising**
- **Debit and Credit Card Provision**
- **Trademark and Intellectual Property Protection**
- **Ship and yacht registration**

### 3. Utlandsjuristen Client Profile

#### **INDIVIDUAL**

Private Individuals of Significant Net Worth  
Expatriate Individuals  
Overseas Property Owners  
Entrepreneurs  
Private Investors  
Persons involved in cross-border business  
International Consultants  
Intellectual Property Owners  
Ship and Yacht Owners

#### **PROFESSIONAL**

Lawyers  
Accountants  
Property Agents  
Sports/Artist Management  
Independent Financial Advisors  
Private Wealth Advisors  
Bankers  
Family Officers

#### **COMPANIES**

Managers  
Directors  
In-house Professionals  
Compliance Officers  
Insurers  
Ship Owners

## 4. Frequently Asked Questions

### Q. What can Utlandsjuristen do for me?

A. Utlandsjuristen provides specialist tax advice with an emphasis on offshore opportunities. Our services will be useful to anyone who wishes to minimise current or future tax liabilities for their company or themselves. To assist with this, Utlandsjuristen establishes and administers secure and efficient corporate and trust structures for expatriates, businesses, entrepreneurs, private individuals and families. This means that we set up and manage offshore companies and offshore trusts and other types of international structures, to meet the specific personal or business objectives of our clients.

### Q. What is the difference between tax avoidance and tax evasion?

A. Tax avoidance is simply doing everything possible within the law to reduce your tax bill. Learned Hand, an American judge, once said: "There is nothing sinister in so arranging one's affairs as to keep taxes as low as possible ... nobody owes any public duty to pay more than the law demands." Tax evasion means paying less tax than you are legally obliged to, usually by concealing the true facts or by failing to complete your tax return correctly. There may be a thin line between the two but, as former UK chancellor Denis Healey put it: "The difference between tax avoidance and tax evasion is the thickness of a prison wall."

### Q. What are the benefits of using offshore structures?

A. OFCs were traditionally characterised by low or no taxes, less onerous compliance requirements, and secrecy. Recent initiatives, led by the OECD against so-called "harmful" tax competition and the Financial Action Task Force against money laundering, have

forced most OFCs to increase transparency and regulation, and to permit the exchange of information for both criminal and fiscal matters.

This does not mean that offshore structures are any less useful, but it is absolutely critical to arrange ownership correctly – for instance, it is usually imperative that a board of directors that is based offshore administers them. Using a mixture of offshore companies, life insurance contracts and offshore trusts, Utlandsjuristen is able to create offshore structures that **legitimately and legally defer or avoid tax** in the taxpayer's home country. Legal opinions confirming the effectiveness of these structures can be obtained on behalf of clients and are available upon request.

**Q. Can I act as a director of an offshore company?**

**A.** Yes, but this will generally make the offshore company liable to tax on its worldwide income in the taxpayer's home country because it would be managed and controlled in the taxpayer's home country.

**Q. If I am a director must I report the liability of the offshore company to the tax authority in my home country?**

**A.** The rules vary from country to country but the answer is generally “yes”, and failure to do so may be an offence and the directors may be prosecuted. In the recent UK cases of R v. Allen and R v. Dimsey, a UK resident shadow director and his advisors were prosecuted under criminal law for failure to report the liability of the company to tax in the UK. The case involved a Jersey company that was deemed liable to tax in the UK because it was, as a matter of fact, managed and controlled from the UK. All the defendants received lengthy custodial sentences.

**Q. Can Utlandsjuristen provide directors?**

**A.** Yes, but those directors must exercise independent mind and management as well as the normal degree of control over the company for which they act. The fact that the company is registered offshore does not mean that its directors can ignore their responsibilities and act in ways that would be improper or unpalatable onshore.

**Q. Will I lose control of my assets?**

**A.** Directors provided by Utlandsjuristen will consider and generally agree to all commercial suggestions that would be of benefit to the company but they will not act in any way that is improper, illegal or immoral. It is not sufficient for the directors to merely appear to manage and control the affairs of the company from offshore, it is vital that the directors are able to clearly demonstrate that they do manage and control the company from offshore. For this reason professional directors should not delegate their authority back to the beneficial owner, or anyone else for that matter. To do so would create potential liabilities for the directors, lead the company into adverse tax consequences and might cause the management company that provides the directors to lose its licence to operate. There is no such thing as a nominee director!

**Q. Can I act as a shareholder in an offshore company?**

**A.** Yes, but this will almost certainly have tax consequences. Controlled Foreign Corporation (CFC) rules, and other anti-avoidance legislation common to most “onshore” jurisdictions, mean that income and capital gains of an offshore company may be attributed to a shareholder who will then be taxed on the proportion of profits of the company equal to his percentage shareholding. There is a duty to declare the shareholding and account for the tax due. For most shareholders therefore, offshore companies on their own will be ineffective in reducing tax. There are some exceptions to these rules and careful planning may enable tax to be legitimately deferred or avoided.

**Q. What if the shares in the offshore company are held by an offshore trust?**

**A.** This may not succeed either. In sophisticated jurisdictions the same sort of anti-avoidance legislation will generally also apply to offshore trusts and render them ineffective for deferring or reducing income and capital gains tax.

**Q. Can I hold shares in an offshore company anonymously?**

**A.** Shares can be issued to nominee shareholders provided by Utlandsjuristen and this would, at present, ensure anonymity – although it does not relieve the beneficial owner of his liability to report his interest if required to do so by his home tax authority. The OECD now requires all OFCs to implement exchange of information procedures so that details of the beneficial ownership of offshore companies may be revealed to an onshore tax authority on request. These procedures were to be implemented by 2003 in relation to criminal tax matters and by 2005 for civil tax matters. Any OFC that fails to do so procedures is unlikely to be able to do business with any OECD member state.

**Q. So is there any confidentiality left offshore?**

**A.** All professionals and directors who are entrusted with somebody's personal or private matters owe a duty of confidentiality to that person. Where professional directors and nominee shareholders are employed, information about beneficial ownership is not available for public inspection. This is the case both onshore and offshore. What has changed in recent years, and particularly since 11 September 2001, is that financial secrecy and anonymity will no longer be tolerated. As a result, barriers to exchange of information in criminal and fiscal matters are in the process of being dismantled. This does not affect the duty of confidentiality owed to clients but does mean that, where correct procedures have been followed, information regarding beneficial ownership must be passed to any requesting authority.

**Q. If there is no anonymity, why set up an offshore structure?**

**A.** Offshore structures that rely only on secrecy are probably being used for illegal tax evasion rather than legal tax avoidance. There is nothing illegitimate or immoral in setting up an offshore structure but failure to make the correct reporting to the home country tax authority is illegal and the onshore world is demonstrating a growing intolerance of those who evade tax by failing to make the reports required by law. There are many ways in which an offshore structure may help to mitigate or avoid taxation but proper advice and correct implementation is essential.

**Q. How might going offshore affect my beneficiaries?**

**A.** Positively. If you are able to arrange your affairs in a tax-efficient way then beneficiaries under a trust (or will) stand to receive more than would otherwise be the case. Provided that the planning you undertake is legitimate and compliant with your local tax laws then large savings in tax can be made to the advantage of your beneficiaries.

**Q. Can I protect my assets from creditors?**

**A.** Yes. A properly structured trust will provide some protection from creditors, but only if the trust is set up before both a debt has arisen and before the facts and circumstances that would give rise to the debt are known. In other words, if you do something that is likely to lead a creditor to make a claim, it is already too late to set up the asset protection structure. Such structures should be set up well in advance of any creditor claim being contemplated.

**Q. Will the costs be prohibitive?**

**A.** No. The fees you will pay for setting up a particular structure will vary considerably depending on whom you use. It is unlikely that the cheapest service provider will be the best, but the most expensive may not be the best either. You should choose a service provider that holds professional licences, has professional indemnity insurance, has a

proven track record of setting up and administering offshore structures successfully and can demonstrate the necessary expertise and resources to provide an efficient and solid service. You must also take into account that there are likely to be two costs involved: the cost of the structure itself, and the cost of the primary and ongoing advice. It would be unwise to set up an offshore structure without first receiving comprehensive advice about the fiscal and legal implications.

**Q. Does it matter where I live?**

**A.** Yes, it matters greatly. Anti-avoidance legislation varies enormously from country to country. It is of enormous importance to understand this legislation and how it will affect you and any structure you might set up. Not surprisingly, a structure that is effective, compliant and legal for a resident of the UK may be completely different to a structure that achieves the same result for a resident of South Africa. It is vitally important to understand the legislation in your country of residence and how it affects any offshore structure you may be contemplating.

**Q. What do I have to tell my home tax authority?**

**A.** This will vary depending on your country of residence. Sometimes it is possible to create a structure in such a way that your interest in that structure does not have to be reported. Sometimes it is possible to create a structure that has to be reported but which is still effective. And sometimes it is possible to create a structure that doesn't have to be reported but would be effective even if it was. The latter is the ideal solution, but any of these three should assist in legal tax mitigation.

**Q. What is the best offshore finance centre for me?**

**A.** The answer to this will vary considerably depending on a number of different factors:

- your country of residence
- your nationality

- the purpose for which you are setting up the structure
- the location of your customers or anybody who deals with your entity
- the changing perceptions of the general public and foreign governments (an offshore centre with a very good reputation may not keep that reputation).

Utlandsjuristen has offices or agents in all major offshore financial centres and is therefore well placed to advise on this aspect without partiality.

**Q. Will I have to travel regularly to an offshore finance centre?**

**A.** No. There should be no need to travel regularly to your offshore centre so the choice need not be limited by geographical considerations. As explained earlier, the offshore structure will almost certainly have to be managed offshore if it is to be effective for residents of most countries. The administration of your offshore company need not take place in the jurisdiction of incorporation. For example, a Hong Kong company could have a bank account in the Isle of Man and have directors based in Monaco. The beneficial owner of that company could, subject to relevant anti-avoidance legislation, be resident anywhere in the world and need never travel to Monaco, the Isle of Man or Hong Kong. It would however be prudent to visit the offshore service provider that is going to have control over the affairs of your company to make sure that you are compatible and that they have the expertise and infrastructure to ensure that your company can be run smoothly and effectively.

**Q. Is there less regulation offshore?**

**A.** No. Quite the opposite. OFCs are more heavily regulated than onshore jurisdictions. For example, a company in the UK that sets up and manages UK companies is not required to have any form of licence or authorisation. The same is not true offshore. Providers of offshore corporate services are heavily regulated and are required to obtain a licence before commencing business and to renew that license every year. The conditions under which licences can be obtained and retained are increasingly onerous.

**Q. Why do I have to explain the source of my assets?**

**A.** For many years the leading industrial countries through supra-national organisations such as the OECD and FATF have been trying to combat money laundering, particularly in relation to drug trafficking. This process was accelerated and refocused after 11 September 2001 with the major objective being preventing terrorists from receiving funds. All financial institutions of any description, both onshore and offshore, now have to identify their clients, monitor their transactions, understand their business and know where, when and how a client has accumulated wealth.

**Q. Why do I have to give proof of my identity?**

**A.** For the same reason that you must prove your source of assets. It is part of the due diligence required before any regulated operator is allowed to take you on as a client. Criminal activities and terrorist financing can only function with access to untraceable funds. The need to provide due diligence is a source of irritation to many clients and represents a major cost to the service provider. Unfortunately, there is no way round this. It is a legal requirement to obtain this information before doing business.

## 5. Case Studies

The following case studies are designed to demonstrate how offshore companies, onshore companies and offshore trusts can be used to structure your affairs so as to maximise your assets and minimise your fiscal liabilities.

### 5.1 Purchasing a Trading Company

*Three investors wish to purchase one-third each of a profitable UK trading company. One investor is tax resident in the US, one in Canada and one in Australia. They wish to structure their affairs to be as tax efficient as possible whilst not interfering with the existing operations of the UK Company.*

#### **The Problem**

Each investor would be liable to pay full rates of local tax on dividends received from the UK Company, as well as full rates of capital gains tax from any subsequent sale of shares in that company.

Incorporating an offshore company, or one company for each investor, to hold the shares in the UK trading company might, in theory, provide a way of deferring tax on the income and capital gains until distributed from the offshore company(s). But in practice, US, Canadian and Australian anti-avoidance legislation would attribute the undistributed income and capital gains of the offshore company(s) to the shareholder(s) and tax them as though all income paid to the offshore companies had been received directly by their shareholders. In other words, US, Canada and Australia all require the interest in the offshore company to be reported, rendering the offshore structure ineffective.

#### **Utlandsjuristen Solution**

Each investor should incorporate a hybrid company, structured specifically to take into account the anti-avoidance legislation of his country of residence, and use such a company to hold his shareholding in the UK trading company. Hybrid companies are limited both by

shares and by guarantee and are therefore effective in deferring payment of tax on the underlying income and capital gains until actual distribution. By using these vehicles tax can be deferred indefinitely. In the case of the Canadian and Australian investors, distribution could be delayed until such time as the investor has moved to a low or zero tax country when it would no longer be liable to Australian or Canadian tax. The US investor could not employ such a technique because, irrespective of his country of residence, he would still be subject to US tax. But considerable advantage could still be obtained for the US person by deferring the tax and reinvesting out of the untaxed funds.

## 5.2 Structuring Patent Royalties

*A Hong Kong resident, Mr K, has developed software that he wishes to patent, trademark and sell throughout the world. Generally, Mr K's income stream will consist of royalties' payable every time a piece of his software is sold.*

### **The Problem**

Most high tax countries require tax to be withheld at source from a royalty payment before payment. Hong Kong has no double tax treaties with other countries through which this withholding tax could be reduced or eliminated. And as Hong Kong would not generally subject the royalty to tax upon arrival, Mr K would be unable to credit the tax withheld against tax due in Hong Kong.

### **Utlandsjuristen Solution**

Mr K should set up an intermediate licensing company in a country that does have tax treaties with the countries from which payments emanate. The Netherlands is generally considered the country of choice in which to establish a licensing structure, but other jurisdictions that have tax treaties, such as Malta, Cyprus, or the UK, may also be worthy of consideration. In this example, Mr K would licence a Dutch company to exploit his software. The Dutch company would in turn sub-license the end user so that royalty payments would be made to the Netherlands rather than directly to Hong Kong. The withholding tax would therefore be reduced or eliminated because the Netherlands has a treaty with the country of payment. The Netherlands Company would pay tax on its profits but those profits would be minimal because, although it receives substantial royalty income, it also has a duty to pay out substantial royalty income under the master licence agreement with Hong Kong. Only the margin between the two would represent a profit and be subject to tax in the Netherlands. The amount of the margin that must be withheld in the Netherlands is statutorily laid down and varies between 0% and 7% depending on the amount. As a result the maximum tax suffered on the gross royalty payment in the Netherlands would be 7% of 33% (the Dutch rate of tax), or just 2.1%.

**P.S.**

- a. *Many tax treaties now contain “limitation of benefits” clauses which provide that, if a recipient company in the Netherlands is not majority-owned by Dutch residents, then the tax treaty cannot apply. In such cases, using a collection service can be highly effective. In other words Dutch residents would beneficially own the Netherlands Company and their fees would be a proportion of the entire margin that must be maintained in the Netherlands. Utlandsjuristen can provide this service.*
- b. *A number of high tax countries could be used as the intermediary licensing company instead of the Netherlands because it is the only the margin which would normally be taxable.*
- c. *In countries where there is no statutory margin such as that laid down in the Netherlands, there may be transfer-pricing issues to consider. Transfer prices are supposed to be set according to the arm’s-length principle: that is they should be the same as would be charged if the sale was to a business unconnected in any way to the selling firm. Using a collection service would generally overcome such concerns because the intermediary company and the end recipient would not have common ownership.*
- d. *Any trading group can create Intellectual Property (IP) by registering a brand, logo, patent, device or name in an offshore jurisdiction. It could then license the use of these to its own group of companies. This would enable the group to extract an element of pre-tax profits from high tax areas and move them to a low tax jurisdiction. Too little attention is paid to protecting IP and it can present tremendous tax planning opportunities.*

## 5.3 Purchasing Foreign Property

*Mr S is looking to purchase a high value property in Spain. Spanish property values are increasing therefore Mr S is concerned to reduce his potential liability to capital gains tax upon resale. Mr S is also quite elderly and is worried about the potential consequences were he to die while still owning the property.*

### **The Problem**

If Mr S dies owning a property he would be subject to Spanish inheritance tax, which attracts rates of between 7.65% and 34% depending on the relationship between him and his heirs. Spanish law also contains “forced heirship” provisions that dictate that Mr S must leave certain proportions of his Spanish-situated assets to his wife and children, and only one-third of his Spanish estate can be bequeathed according to his private wishes.

If Mr S were to sell the property, he would be subject to capital gains tax at 35% on any increase in the value of the property. The transaction costs on the resale would also amount to around 10% of the resale value. This would be a considerable cost to the purchaser and would effectively reduce the price Mr S could expect to receive for his property.

During the life of Mr S, he would be subject to Spanish wealth tax on his total Spanish-based assets at a rate of between 0.2% and 2.5% per annum, depending on the total value involved.

### **Utlandsjuristen Solution**

Traditionally, the most tax efficient way of purchasing property in Spain was to own it through an offshore company. But companies not resident in Spain are now subject to an annual charge of 3% of the value of the property, making this form of ownership unattractive for all but lower value properties.

But if a company resident in Spain purchases the property and non-resident companies own the shares of that Spanish company, then the 3% tax does not apply.

Inheritance tax is eliminated because the company would continue despite the death of Mr S.

Resale could be achieved by transferring the shares of the non-resident companies to the new buyer. This would circumvent any transaction in Spain and would therefore eliminate both the capital gains tax and the Spanish transaction costs.

**P.S.**

- a. *This arrangement can also be employed by persons who have already purchased Spanish property in their own names, and who wish to avoid Spanish capital gains tax on resale. The property can be injected into a Spanish company at minimal cost, and the shares of that company can then be transferred to offshore corporate ownership. The tax saving possibilities outlined above would then apply on resale. The earlier this is done the better.*
  
- b. *Even if the subsequent purchaser wished to purchase the property and refused to buy the corporate structure there would still be a massive saving. Spanish companies pay capital gains tax at a rate of 15%, whereas non-resident individual owners pay tax at a rate of 35%. As a result, the minimum saving using this structure is 20%.*

## 5.4 Foreign Ownership Of Portuguese Property

*Mr P purchased a substantial Portuguese property in the name of an offshore company. At the time of purchase, Mr P was advised that using an offshore company would avoid liability to Portuguese inheritance tax (this has since been largely abolished) and that resale could be achieved by a transfer of the shares in the offshore company, thereby avoiding Portuguese capital gains tax and high transaction costs amounting to some 16%.*

### **The Problem**

Portugal has recently introduced new legislation that imposes tax on property owned by companies located in “blacklisted” jurisdictions. Most popular offshore financial centres appear on the Portuguese blacklist.

Mr P considered transferring the property back into his own name, but this would remove the advantages of offshore ownership. The transfer would also have to be made at the current market value, which would trigger a large capital gains tax liability despite Mr P not having any sale proceeds at his disposal with which to pay it.

### **Utlandsjuristen Solution**

Mr P should redomicile the offshore company to a tax efficient jurisdiction that is not on the Portuguese blacklist. A number of jurisdictions are suitable but the preferred option is Malta. Malta is now a full member of the European Union and has a tax treaty with Portugal, but it retains a highly advantageous tax regime.

When the company has been redomiciled in Malta, the annual taxes imposed under the new legislation in Portugal would no longer apply but all the advantages of offshore ownership would remain – avoidance of Portuguese inheritance tax, avoidance of capital gains tax on resale and avoidance of Portuguese transfer taxes on resale.

This solution also means that there would be no need to transfer the property out of the corporate structure and thereby trigger immediate capital gains and sales tax costs.

**P.S.**

- a. *Utlandsjuristen was instrumental in getting the legislation for redomiciliation of companies into Malta passed into law and is the world expert on implementing this solution for both the offshore and Portuguese elements.*
  
- b. *All offshore companies must appoint a fiscal representative resident in Portugal and present an annual return for the offshore company. Utlandsjuristen provides a full fiscal representation and accounting service in Portugal to meet these requirements.*

## 5.5 Holding Company for Dividends and CGT planning

*Mr D, a resident in a low tax country that has no relevant tax treaties, is purchasing the majority of the shares in two successful companies, located in Russia and Germany respectively. Both businesses may require loan finance to be made from the holding company and both businesses are generating good dividends. There is also a five-year exit strategy that is likely to result in a large capital gain that would be taxable for Mr D in his home country.*

### **The Problem**

Dividends paid out of Russia and Germany would normally be subject to withholding tax unless they are paid to a resident of a country with which they have a tax treaty that could reduce or eliminate the tax. Interest paid out of Russia and Germany would also generally attract a withholding tax. Mr D's home country would charge capital gains tax upon the resale of the shares in the Russian and German companies.

### **Utlandsjuristen Solution**

The shares in the Russian and German companies should be purchased using a Dutch company. The Netherlands has a tax treaty with Russia that reduces the withholding tax from the usual 25% to 5%.

The Netherlands also has a tax treaty with Germany but it is simpler to rely instead on EU Directive 90/435, which applies when a dividend is paid by a subsidiary located in one EU member state to a holding company located in another EU member state. Subject to certain conditions, this EU Directive requires that no tax should be withheld on the dividend at source. As both the Netherlands and Germany are full members of the EU, dividends can flow from Germany to the Netherlands free of withholding tax.

A Dutch company may also benefit from the "participation exemption" which would exempt dividends received in the Netherlands from the usual levels of Dutch tax. Interest can be paid, from either Russia or Germany, to the Netherlands at reduced levels of withholding tax due to the respective treaty or the EU Directive on royalties and interests.

A Dutch participation exemption company is exempt from capital gains tax on the resale of the shares in the German or Russian company.

Dividends paid out of the Netherlands would be subject to Dutch withholding tax; therefore a tax efficient exit is required. This can be achieved by having the Dutch company wholly owned by another tax efficient EU holding company, such as a UK or Spanish company. Under EU Directive 90/435, no withholding tax would apply to dividends paid between the Netherlands and the UK. The UK Company would not incur any charge to tax on dividends received in the UK nor would tax be withheld tax on dividends paid out of the UK to the ultimate owner.

## 5.6 Personal Service Company

*Mr C is a highly paid IT consultant who works throughout the world. Each project normally lasts at least six months and requires Mr C to travel to a foreign country to carry out his duties.*

### **The Problem**

Mr C is likely to spend more than six months in each country in which he undertakes a project and is therefore likely to become tax resident in that country and subject to that country's full rate of tax on the income generated from the project. Mr C is normally resident in a low tax country and is therefore unwilling to pay higher levels of tax. Mr C also finds it difficult to be competitive when he quotes for a project unless he is tax efficient in the way that he works.

### **Utlandsjuristen Solution**

Mr C should set up a personal service company. This company, rather than Mr C in a personal capacity, should enter into contracts with clients. If Mr C's company is located in a jurisdiction that has a tax treaty with the country in which he carries out the work, the company should be able to be paid gross of tax on the assumption that it will be taxed in the country where his company is located. Mr C's company can then pay him a moderate salary, leaving the balance of the contract value to be taxed at the company's low rate.

### **P.S.**

*Employment income may be taxable at source without the use of a tax treaty as described above. It is therefore important to select a jurisdiction that has low effective rates of tax but still manages to reduce any withholding tax or tax at source on the income paid. Malta, Cyprus and Mauritius may all provide planning opportunities here. Alternatively, structures using high tax countries such as UK Limited Liability Partnerships (LLPs) or US Limited Liability Companies (LLCs) may also provide a solution.*

## 5.7 Estate Duty / Inheritance Tax (IHT) Planning

*Mr X lives in a country which charges IHT only on assets situated within the country but he has a large portfolio of foreign investments which include:*

- *shares in a valuable UK trading company*
- *a holiday villa in Spain*
- *an apartment in New York*
- *a large art collection in his home country flat.*

### **The Problem**

The UK, Spain, USA and Mr X's home country all charge IHT on assets physically situated within their jurisdiction.

### **Utlandsjuristen Solution**

Mr X's country of residence permits him to set up a trust structure to hold the assets. But particular attention needs to be paid to the way in which these assets are owned in order to avoid taxes that might apply if the assets are simply held by the trust.

The UK assets are probably the most straightforward. There would be no charge to tax if the shares in the UK Company were transferred directly to the trustees because this would be a sale by one non-resident to another and would therefore avoid UK capital gains tax. When the shares in the UK Company are held by the trust, the death of Mr X would not represent a taxable event in the UK and therefore UK IHT is eliminated.

If the Spanish property were to be held directly by the trustees, there would be a charge of 3% per annum applied on the value of the property. This can be avoided by having the property transferred to a Spanish company, which in turn is owned by a suitably located offshore/onshore company, which in turn is owned by the trust. Further explanation of this structure can be found in Case Study C above.

On the death of Mr X, the USA would make a charge to IHT based on the value of his New York apartment. That charge can be avoided by transferring the apartment to an offshore

company whose shares are owned by an offshore trust. Careful consideration must be given to certain US anti-avoidance legislation to avoid the presumption that there has been a change of ownership and the consequent application of transfer or death taxes upon the death of Mr X.

The art collection can be transferred directly to the trustees but care would have to be taken to ensure that Mr X does not retain benefit by having the use and enjoyment of the art collection throughout his life, whilst purporting to have divested himself of those assets. If this were the case, then the transfer to the trust might be ineffective in avoiding local IHT. But, if Mr X were to pay an annual fee for the use and enjoyment of the art, then local IHT should be eliminated.

**P.S.**

- a. *If Mr X were living in a high tax country that levied IHT on a worldwide basis, then the foreign assets may be subject to IHT in their country of situation AND also in Mr X's home country. Credit is rarely given for capital taxes paid in one jurisdiction against capital taxes due in another, so the need for proper IHT planning is even greater.*
  
- b. *In many countries the transfer into trust attracts some form of transfer/gift tax, but with care that can be eliminated or reduced by making a sale of the assets even if the purchase price is left outstanding.*

## 5.8 UK Property Purchase

*Mr Z, a foreign national, owns two properties in London worth £1 million each. He now wishes to purchase a third investment property worth £2 million in London.*

### **The Problem**

Many UK non-domiciliaries (generally speaking people not born in the UK) believe they fall outside the scope of UK Inheritance Tax (IHT). This is not the case. The general rule is that the death of the owner of UK-situated property gives rise to a charge to UK IHT irrespective of the domicile or residence of that owner. The current rate of IHT is 40%, although the first £263,000 of an estate is exempt. It is important to note that the value of ALL property and assets situated within the UK must be aggregated and IHT is payable on the total. So in this case the IHT bill would be 40% of £3,737,000, or £1,494,800!

### **Utlandsjuristen Solution**

If the property is purchased in the name of a non-UK company then, because corporations do not die provided are kept in good standing, UK IHT is avoided.

On purchasing property in a corporate name, the shares of the corporation become part of the estate of the ultimate beneficial owner. It might therefore be the case that IHT is assessed on these shares in accordance with the rules applicable in the owner's home jurisdiction and/or the jurisdiction of incorporation of the company. Some further planning may be necessary to eliminate that tax as well.

### **P.S.**

- a. *The property currently owned in the name of Mr Z could be transferred to the offshore company without tax consequence, because the UK, unusually, does not charge CGT on the sale of a property by a non-resident. Stamp duty would apply if the transfer is made by way of sale but this could be avoided if the transfer was made by way of gift.*

*b. There would be some benefit in having each property owned by a separate company so that a subsequent sale of a property could be achieved by way of a transfer of the shares in the property owning company. This may give the purchaser the opportunity of avoiding stamp duty and therefore increase the potential value of the property.*

## 5.9 Obtaining UK Non-Domicile Status

*An elderly UK national, Mr Q, has been living in Australia for 20 years and has a worldwide estate (mostly sited in Australia) valued at £1 million.*

### The Problem

Many UK Nationals live under the misapprehension that because they live outside the UK they are no longer subject to UK Inheritance Tax ("IHT"). Wrong! Any UK-domiciled individual (generally someone born in the UK), irrespective of their residence, retains their UK domicile (known as domicile of origin) until death or until the UK Revenue agree otherwise. The rate of IHT is 40% of the amount by which the total value of their worldwide estate exceeds £263,000.

### Utlandsjuristen Solution

Mr Q considers himself to be Australian but he has retained his UK nationality and passport for sentimental reasons. Certainly he is tax resident in Australia, and neither resident, nor ordinarily tax resident, in the UK. But Mr Q may well still be subject to 40% UK IHT. At the current valuation of £1 million, and after subtracting the first £263,000 that would be exempt from UK IHT, Mr Q's estate would be subject to a £294,800 tax demand.

To avoid this possibility, Mr Q should take steps to convince the UK Revenue that he is not domiciled in the UK. Legally, Mr Q must satisfy the UK Revenue that he has left the UK, **has no intention of returning to the UK to live** (temporary visits are not a problem) and has established a permanent home abroad. The UK Revenue will want to see evidence, which should include:

- purchase of a house in the new country;
- taking steps to be become a national/permanent resident of the new country;
- a long period (seven to ten YEARS) of residency abroad;
- establishment of business and other financial ties with the new country;
- severance of business ties with the UK.

This is not an exhaustive list and other indicators would assist.

As with many Revenue departments around the world, the UK Inland Revenue will not give advanced rulings and it is therefore only possible to test a UK domicile or lack of one by filing a relevant return in the UK. For persons resident outside the UK, this is achieved by making a “chargeable transfer”. Under current rules this is most easily done by setting up a discretionary trust and transferring into it an amount in excess of the lifetime and annual exemptions, we suggest £285,000. This will produce a lifetime IHT equal to 20% of the excess value transferred (e.g. the nil rate band of £263,000, plus the annual exemption of £3,000 and the £3,000 unused annual exemption in the previous year brought forward, to give £269,000. Chargeable value transferred is therefore £16,000 and tax bill is 20%, or £3,200 if non-domicile status is not agreed. If, however, the UK agrees that the transferor was not UK domiciled at the time of transfer, there will be no tax bill issued and the Revenue will confirm that this person was not domiciled in the UK at the time of transfer.

**P.S.**

- a. *Many persons who have lived abroad for many years decide not to make an application either believing themselves to be safe from tax or believing that the UK Revenue will not trouble their heirs/estate on their death because they will not be aware that they have died. This is not prudent. In these days of increasing exchange of information, it is unlikely that anybody of substantial wealth can pass away abroad without his or her home country/country of origin getting to hear about it. Failure to take steps to mitigate UK IHT will greatly impact on the value left to the heirs.*
- b. *Even if the deceased is subject to IHT in his new country of residence, he may also pay IHT on the same assets back in the UK without planning appropriately. A double charge to IHT could wipe out the entire estate.*
- c. *Getting a ruling on domicile is an insurance policy. You may think you are not domiciled but if the Inland Revenue disagrees, you may not be around to argue the point and your estate and heirs may lose out. The procedure is relatively straightforward and, even if the Revenue decide you are still domiciled, a ruling will*

*be helpful in deciding what to do next. Planning without certainty on the domicile issue can be a disaster.*

## 6. Corporate and Tax Planning Services

### 6.1 Introduction

#### **Why Incorporate?**

The primary attraction of incorporation is to limit the liability of investors. First introduced in the nineteenth century, limited liability enabled shareholders to form companies in which their potential losses were restricted to the amount of the share capital that they had either paid for or undertaken to pay for. Because the company was a distinct legal entity, creditors were only able to lay claim to assets of the company for payment and not the personal assets of the shareholders.

#### **Using Companies to Mitigate Tax**

Profits received by a company are also taxed at the company rate rather than the rate applicable to its shareholders. A resident of a high tax country can therefore set up a company in a low or zero tax jurisdiction and arrange for profits to be booked into the name of that company. This generates a saving equal to the difference between the corporate rate of tax and the shareholders' personal tax rate. Anti-avoidance legislation in the shareholder's country of residence may reduce or nullify the effectiveness of such arrangements but skilful structuring may make that anti-avoidance legislation inapplicable.

If the company makes a distribution of profit, usually in the form of dividends or royalties, then those distributions are generally taxable in the hands of the recipient. Accordingly, the greatest advantage is achieved by letting the profits roll up within the company account so that tax is deferred or avoided. If profits can remain untaxed offshore then tax is saved on both the original profit and the investment income generated by reinvesting those profits so the benefit is cumulative and substantive. If distribution of the profits can be delayed until

the recipient has moved to a jurisdiction with a lower, or even zero, rate of tax, then tax may be avoided completely.

### **Where to Incorporate?**

The answer depends upon the intended use of the company and upon the client's own personal or business circumstances. A number of factors must be considered: the tax regime, political and economic stability, communications, language, legal system, confidentiality, exchange controls, banking facilities and, importantly, the cost – both the incorporation and the management fees.

It is particularly important to remember that the tax and other benefits obtained will depend not only upon the tax legislation of the country of residence, and possibly the domicile of the beneficial owner, but also any relevant anti-avoidance legislation of any country in which the client intends to do business.

## **6.2 Bases of Taxation**

### **Tax Residency**

It is a common misconception that both a company and an individual may only be tax resident in one jurisdiction at any one time. Most countries will tax an individual who spends six months within their borders. For example an individual who spends six months in the UK and the other six months in the US may be considered tax resident in both the US and the UK, and therefore subject to tax on his worldwide income in both countries. Happily, the US and UK have signed a tax treaty which is designed to eliminate double taxation by giving credit for tax paid in one country against the tax due on the same income in the other country. But the individual would still be subject to the highest level of taxation applicable in either country.

A similar position can arise in respect of companies. Most countries consider any company that is incorporated within their jurisdiction to be tax resident. Most countries also consider any company that is managed and controlled within their jurisdiction, to be locally tax resident – even if it is incorporated abroad. A company is generally considered to be managed and controlled wherever its directors habitually meet and reside. Thus a company incorporated in the US which has a board of directors who meet and reside in the UK, could be deemed subject to both US and UK tax on its worldwide income. This “management and control” test means that it will rarely be the case that an individual residing onshore can safely act as the director of an offshore company without making that company liable to tax in his home jurisdiction. For this reason Utlandsjuristen often provides directors who manage the affairs of the offshore company from offshore.

### **Anti-Avoidance Legislation**

In simple terms, offshore companies can be extremely effective in avoiding tax if they are used to collect income. But sadly things are not always that simple. Many countries have enacted anti-avoidance legislation designed to reduce or eliminate the effectiveness of such arrangements. Each country has its own specific rules in this area but such legislation can be broadly categorised as follows:

#### **a. Controlled Foreign Corporation Legislation**

Controlled Foreign Corporation (CFC) legislation seeks to tax the profits of a company as though they had been paid out to its owners whether such profits are actually paid out or not. Where an owner holds only a portion of a company then the percentage of the company’s profits allocated to him is equal to his percentage of shares. If, for example, a UK resident owned 50% of an offshore company then he would be liable to declare his interest in the company on his year end tax form and would be taxed as though he had received 50% of the profits of that company, whether he had actually received them or not.

#### **b. Transfer Pricing Legislation**

All arrangements between companies that have any sort of common ownership must be at “arms length”, or open market, prices. If this is judged not to be the case, “transfer pricing” legislation enables the local revenue to adjust those prices. For example, if an offshore trading company is set up to buy goods from China and sell them on to an associated company in the US, then the price at which the goods are resold must be the same price as the US Company would be expected to pay on the open market. If the US company pays a higher price to an associated company in a low tax jurisdiction and, as a result, effectively shifts profits to that associated company and reduces its US tax bill, then the Internal Revenue Service (IRS) is entitled to adjust the taxable profits of the US Company to reflect the lower open market price.

### **c. General Anti-Avoidance Provisions**

Most high tax countries have brought in legislation, or rely on case law, that simply states that if arrangements are entered into whose main or primary purpose is to reduce tax, then any tax advantage obtained can be removed. In other words, any arrangements that confer a tax advantage should also have a commercial purpose and be set up, at least in part, for reasons other than tax planning.

### **d. Anti-Treaty Shopping Provisions**

Treaties can be used to reduce withholding tax on dividends, interest and royalties but certain treaties may prevent non-residents of the treaty partner from benefiting. For example, the US withholds tax on royalties paid to non-residents at a rate of 30%. The US/Netherlands treaty reduces this withholding tax on royalties to zero but the treaty contains provisions designed to make the treaty inapplicable unless the ultimate beneficial owner of the royalty income is a bona fide resident of the Netherlands. A Hong Kong resident wishing to reduce withholding tax in the US could not therefore achieve this by setting up a Netherlands company to receive the income and then pay it on to Hong Kong because the beneficial owner would be a Hong Kong resident rather than a resident of the Netherlands.

There will always, however, be products or structures that are specifically allowed by statute and which can be used to generate significant tax advantage. Likewise there will always be ways in which an operation may be structured so as to prevent it falling foul of anti-avoidance legislation. Simple offshore structures will rarely work. In most situations a more sophisticated structure will be needed and the on-going administration will have to be handled precisely and skilfully if later problems are to be averted.

## 6.3 The Legal Framework

*These general notes are written with reference to United Kingdom companies and companies incorporated in jurisdictions which follow UK law.*

### **Company Name**

The Registrar has the power to refuse registration of any name that he considers undesirable, confusing, offensive or too similar to that of an existing company. Certain words – such as trust, investment, bank, and insurance – may be regarded as being sensitive and can only be used if the company is specifically licensed to undertake the indicated activity. The criteria for name selection vary from jurisdiction to jurisdiction but broadly follow these guidelines.

### **Authorised Share Capital**

The amount of the authorised capital – the capital available to be issued – can be as high as wished. In most jurisdictions capital taxes increase in line with the authorised capital so, generally, a company would be incorporated with the highest authorised capital for which the minimum registration fees apply.

### **Issued Share Capital**

The issued share capital – the capital actually taken up by shareholders – may be paid, partly paid or issued for a consideration other than cash. When shares have been wholly paid, the shareholder has no further liability to the company. If the shareholder does not pay for his shares or pays only in part then he can be called upon to pay the balance outstanding at any time and would always be subject to a call if the company cannot otherwise pay its debts.

If nominee or trustee shareholders hold shares, they would normally be fully paid up so as to avoid liability for the professional shareholders.

### **Registered Office and Other Domiciliary Requirements**

All companies must have a registered office within the country of incorporation, but this does not have to be the place where the company carries on business or keeps its books of account. Many jurisdictions require all companies to appoint a resident agent to receive official notices and legal papers. Some also require companies to have a locally resident company secretary or director.

### **Company Secretary**

It is usually the responsibility of the Company Secretary to make sure that a company is in good standing and make the necessary returns to the Registrar and Government. This requires a thorough knowledge of local company law and practice so it is strongly recommended that a locally based professional is appointed even if there is no strict legal requirement to do so.

### **Memorandum of Association**

Historically the objects of the company would be set out in the Memorandum of Association. Because a company was not allowed to undertake activities that were not authorised by its Memorandum, normal practice was to draft extremely wide powers for a company with care being taken to ensure that all the proposed and future activities of the company were fully set out. This “ultra vires” rule has now been abolished in most jurisdictions. Instead the Memorandums of companies incorporated in these jurisdictions

can simply state that the objects are unlimited, so that companies may undertake any lawful business that is not specifically proscribed or licensable.

### **Articles of Association**

The Articles of Association (often called "Bye-Laws") represent a contract between the shareholders and the company. They provide detailed rules for the management of the company's affairs and for the conduct of its business.

### **Shareholders, Directors and Secretaries**

Shareholders are the legal owners of the company but responsibility for the day-to-day management of the company rests with its directors and, to a limited extent, with the company secretary. The shareholders would normally retain the power to remove a director from office and elect a replacement but should not interfere with the management of the company and do not have power to do so. It is quite common for the shareholders to also act as the directors of the company.

In jurisdictions that require a public record of the details of the shareholders to be maintained, the shareholders of record will frequently be nominees or trustees who will hold the shares on behalf of the beneficial owner, thereby preserving their anonymity.

As mentioned earlier, Utlandsjuristen frequently provides directors who reside and meet offshore so as to prevent the company being considered as resident in the high tax country where the owners reside. Such directors will carefully consider and will normally carry out the wishes of the ultimate owner. But they should not blindly follow his/her directions (or those of any other third party) as otherwise it is clear that the control and management rests with the instructing party and not with the directors. If this were the case, the company could then be considered as tax resident wherever the instructing party resides. If the tax status of the company is not to be prejudiced, it must be capable of demonstration that the directors exercise independent mind and management.

Clients may naturally be nervous about giving over control of "their business" to a third party, so it is vital that such control is given only to organisations of the highest integrity and experience. Utlandsjuristen meets these criteria. We employ professionally qualified staff, hold appropriate government licences and have successfully managed many thousands of companies. The importance of these factors and this track record cannot be overstated.

### **Registered or Bearer Shares?**

In response to international demands for increased transparency and "know your client" procedures, most reputable offshore jurisdictions that used to allow bearer shares have now either prohibited them or require them to be "immobilised" – that is, lodged with a licensed practitioner (usually locally) to the order of a specified beneficial owner. Any jurisdiction that still permits the issue of bearer shares will almost certainly appear on the OECD black list. In short, bearer shares are no longer an option that will be of any appeal to most clients as they will not increase confidentiality but will increase costs. We therefore strongly recommend the issue of registered shares only.

## **6.4 Confidentiality and International Initiatives**

The degree of disclosure varies between different jurisdictions. In some jurisdictions there is a requirement to file details of the directors, shareholders and secretary on a public register, but nominee shareholders and professional directors can be employed to retain anonymity. In other jurisdictions, such as the Caribbean and Pacific islands, only minimal public disclosure is required.

Generally, in the jurisdictions that follow the English common law there is an implied duty for management companies, bankers, etc. to keep their clients' affairs confidential. In some cases this common law duty may be supplemented by local legislation that imposes criminal penalties on those who breach confidentiality or attempt to get others to do so. For example, the Confidential Relationships (Preservation) Ordinance in the Turks & Caicos

Islands imposes a maximum penalty of a fine of US\$50,000 and/or a three-year prison sentence on those who reveal confidential information about a TCI company or its business dealings.

In all reputable OFCs details of beneficial ownership must now be made available upon request to “competent authorities”, including foreign tax departments around the world. Secrecy no longer therefore exists offshore, but this will not concern those who engage in legitimate tax planning.

### **Know Your Customer Principles / Due Diligence**

Following the introduction of anti-money laundering legislation worldwide, company managers and financial institutions now have a statutory duty to implement “Know Your Customer” (KYC) procedures. It is a requirement for them to know the identity of the beneficial owner of a structure or account, the source of monies being transferred into an account and the type of business a company will undertake. Clients should therefore expect to provide full and frank information about themselves, their business dealings and their future plans.

### **Organisation for Economic Cooperation & Development (OECD)**

In May 1996, the OECD launched an initiative designed to force OECD members, together with a number of non-OECD members that had been identified as “tax havens”, to eliminate harmful tax practices.

In 1998, the OECD listed 41 jurisdictions as “tax havens” and called on them to commit to introduce, or amend, legislation so as to increase transparency and to exchange information upon request by a competent authority in an OECD member state.

Uncooperative jurisdictions would face sanctions including:

- making payments to that OFC non-deductible for tax purposes;
- requiring member states to deduct tax from any payment to an OFC;

- not allowing that OFC to use the banks and other financial institutions of the OECD member states.

By 2004 only five of the original 41 OFCs – Andorra, Liberia, Liechtenstein, the Marshall Islands and Monaco – were still refusing to cooperate. But Antigua and St Vincent have suspended their commitments because, they claimed, there was not a level playing field.

The OECD admitted that it was aware that a number of financial centres – particularly Hong Kong and Singapore – had not been a part of this exercise and that there were widely diverging practices within the OECD itself.

It said that future work with cooperating jurisdictions would involve: monitoring newly-introduced preferential tax regimes; developing and implementing the transparency and exchange of information standards and the establishment of a level playing field; intensifying discussions with other non-OECD jurisdictions to gain their compliance; and improving access to bank information for tax purposes.

It said OECD members could consider applying coordinated, unilateral "defensive measures" to "effectively neutralise the deleterious effects of harmful tax practices".

The OECD has also agreed to include new exchange of information provisions in its Model Tax Convention on Income and on Capital, upon which most tax treaties are based. Article 26 has been changed to clarify that Contracting States should obtain and exchange information, irrespective of whether they also need the information for their own tax purposes, and to exclude bank secrecy laws from being used as a basis for refusing to exchange information.

### **Tax Information Exchange Agreements**

The USA has pressured various OFCs into signing agreements for the exchange of information on tax matters. These agreements require the contracting states to exchange, upon request, information relevant to the assessment and collection of tax and enforcement of tax claims or the investigation or prosecution of tax crimes.

The US stated that its intention was to sign such agreements with all OFCs by the end of 2004.

### **European Union (EU) Savings Tax Directive**

The EU has agreed to introduce measures designed to counter tax evasion across EU member states. The Savings Tax Directive will affect any EU resident who holds an income producing account in another EU member state or in a territory under the control of another EU member state.

Under the measure, 12 EU states will automatically exchange information about the banking details of EU citizens. Luxembourg, Belgium and Austria have been permitted to retain their bank secrecy laws for a limited period, but will instead impose a withholding tax on the income from savings of EU residents.

Due to enter into force on 1 January 2005, the Directive was contingent upon the EU reaching agreement with third countries – Switzerland, Liechtenstein, Monaco, San Marino and Andorra. A provisional agreement for Switzerland to withhold savings tax earned by EU citizens was reached in 2003, but Switzerland subsequently doubted its ability to ratify the treaty in time and implementation was postponed for at least six months.

The associated territories affected by the Directive are Gibraltar, Jersey, Guernsey, the Isle of Man, Cayman Islands, Anguilla, British Virgin Islands, Turks & Caicos Islands and the Netherlands Antilles. It is anticipated that Bermuda will also be specifically included. They are all expected to adopt a withholding tax rather than introduce automatic exchange information.

Surprisingly, the legislation only affects individual account holders and, possibly, trust accounts. It does not affect corporate accounts even if the corporation is registered in an EU member state which banks in another EU member state or associated territory.

Additionally, some major banking centres around the world, especially Singapore, Hong Kong, Bahamas, Dubai and Uruguay, are not currently affected by the legislation nor are they being pressurised by the EU to introduce similar measures.

### **Financial Action Task Force (FATF)**

The FATF was set up in 1989 to develop and promote policies to combat money laundering. Initially comprising the G-7 member States, the European Commission, and eight other countries, it has since expanded to 28 members.

In 1990, the FATF issued a set of Forty Recommendations, which provided a comprehensive plan of action needed to fight against money laundering. Since then it has completed two rounds of mutual evaluations of its member countries. In 2001, the development of standards in the fight against terrorist financing was added to the mission of the FATF.

The FATF is engaged in a major initiative to identify non-cooperative countries and territories (NCCTs) and ensure that all OFCs adopt and implement measures for the prevention, detection and punishment of money laundering according to internationally recognised standards.

In 2000, the FATF published an initial report on NCCTs that set out 25 criteria designed to identify relevant detrimental rules and practices. This was followed by a list of 15 jurisdictions that had either critical deficiencies in their anti-money laundering systems or had demonstrated unwillingness to co-operate in anti-money laundering efforts.

This list of NCCTs now comprises: the Cook Islands, Indonesia, Myanmar, Nauru, Nigeria, and the Philippines. The FATF called on its members to ensure that financial institutions give special attention to businesses and transactions with persons, including companies and financial institutions, in these countries.

Counter-measures were imposed against Myanmar in 2003 due to its failure to introduce comprehensive mutual legal assistance legislation.

The effect of this is that all countries are introducing higher standards of due diligence and “know your customer” principles and financial institutions are being ever more diligent and careful about the business they take on and the way that business is monitored.

Customers of any financial institution or financial service provider (including Utlandsjuristen) must expect to supply proof of identity, proof of residential address, and references before they will be taken on as customers. They must also explain the source and business purpose for any substantial movement of funds. Compliance with these requirements brings additional costs and inconvenience but is entirely unavoidable and is now an absolute requirement, imposed by national and international regulations.

## **6.5 Death of the Client and Trusts**

An offshore company can own assets of all descriptions, including bank accounts, safely and confidentially. Transferring assets into a corporate structure means that the underlying assets can be removed from the estate of the client and instead the estate becomes the owner of a single asset being the shares in the company. This is advantageous because, on the client's death, only the shares of the company instead of each underlying asset, need to be transferred to the heirs.

Normally assets are transferred on death by means of a will, but this can be an expensive and lengthy procedure. Even a simple estate may take over a year to wind up and the costs may amount to 4-6% of the value of the estate. Creating a trust can be used as an alternative to a will and has a host of advantages. A comprehensive explanation on the workings and advantages of trust structures is contained within the trusts section in the brochure. See below.

## 6.6 Special Types of Companies

### Hybrid Companies

The term "hybrid company" is used to describe a company that is limited both by shares and by guarantee and therefore has two classes of members: shareholders and guarantee members. The directors elect a Guarantee Member into membership of the company on condition that the member undertakes to contribute to the debts of the company up to a certain specified maximum amount, typically US\$100 or less. As such a Guarantee Member holds a contingent liability. This contrasts with the position of the shareholder who holds an asset – the shares.

The rights and obligations which attach to each class of membership can be laid down in the Articles of Association of the company or by the directors in board meetings, thereby keeping the terms and conditions of membership confidential. The arrangements that can be made are infinite and flexible. Skilful drafting can be used to attach different rights and obligations to each class of membership and create structures that are precisely tailored to the different needs of the client.

Hybrid companies are often used as "quasi trusts", particularly by persons resident in civil law jurisdictions where trusts are not recognised. Typically the company will be structured so that the shares are issued on terms that each carries one vote but no rights to dividends or to participate in the capital or income of the company. The Guarantee Memberships would be issued on terms that they carry no rights to vote but all the rights to participate in the income and capital of the company. Thus all control rests with the shareholders but all benefits flow to the Guarantee Members. The shares can be issued to professional managers but, unlike normal shareholders, they cannot receive financial benefit from holding the shares and therefore act as quasi trustees. All financial benefits flow to the Guarantee Members who are therefore in a position not unlike the beneficiaries of a trust.

A Guarantee Member's interest can be extinguished on death thereby avoiding any succession problems and the need to obtain probate. There will generally not be any inheritance tax or state duty implications.

The anti-avoidance legislation enacted by many onshore countries aims to tax the undistributed or untaxed profits of low tax paying companies as though those profits have been received by the shareholders. Although the legislation differs by country, it generally focuses on the percentage of shares held or the control of the company if control is achieved otherwise than through the ownership of shares. Under the arrangements outlined above, the Guarantee Members would not own shares or have control so it may be that this type of anti-avoidance legislation is ineffective in taxing profits rolled up within a hybrid structure. It will generally also be the case that a hybrid structure does not entail any reporting requirement for the Guarantee Members so that, on a practical level, unwanted attention from onshore revenue authorities can be avoided.

A hybrid company may also provide a means of bypassing Exchange Controls. A Guarantee Member would normally be issued with a membership certificate, but this does not constitute a share, stock or security. Most Exchange Control regulations refer to securities and therefore the holding of a Guarantee Membership may not require Exchange Control approval.

There are a number of offshore jurisdictions in which it is possible to form hybrid companies. The structures offered by the Isle of Man and Gibraltar have been the subject of much recent interest, but the TCI hybrid company is perhaps the most flexible.

### **Guarantee Companies**

A guarantee company is a company that is limited only by guarantee and therefore has only Guarantee Members and no shareholders. The same status applies to Guarantee Members as outlined above for a hybrid company, but the hybrid may have an advantage in that control rests with a third party e.g. the shareholders. In a guarantee company the Guarantee Members, rather than shareholders, would hold the voting rights and control so

it may not be as easy to sidestep the anti-avoidance legislation and Exchange Control regulations of certain of the major onshore countries.

Guarantee companies can be formed in most offshore and onshore jurisdictions that follow the British legal system.

### **Anglo Saxon Foundations**

Traditionally, the Liechtenstein foundation has been the preferred vehicle for residents of civil law jurisdictions who wish to protect family assets and pass them on to future generations. English Common Law does not specifically recognise the concept of the foundation, but a guarantee company may be structured to mirror a Liechtenstein entity. Such an entity may conveniently be described as an “Anglo Saxon Foundation”, but in many ways this structure is more sophisticated and flexible than the more expensive Liechtenstein equivalent. Moreover, because such an entity is formed under an English Common Law system, it is also more intelligible to a wider audience and will be more generally accepted by the major onshore jurisdictions.

An Anglo Saxon Foundation is created by the founder, who may be elected as the founding member, transferring assets to the guarantee company as a subscription. The company elects members and appoints directors. Membership is not transferable and ceases upon death or resignation, but the directors may then elect new members.

Frequently there are two classes of directors, founder directors and general directors. The founder directors can only be drawn from a designated class, which would normally be the founder member and his family. They are the only persons who have power to elect new members and the members are the only persons who may benefit from the company. In this way control of the financial benefits remains with the family acting in its capacity as founder directors. The general directors would typically be professional advisors who manage the day-to-day affairs of the company but are unable to benefit in any way other than by payment of the agreed fee for their services. They cannot have any control over who may be elected as members and how those members may benefit.

## Limited Liability Companies (LLCs)

The limited liability company is another hybrid business entity, which combines the features of a partnership with those of a corporation. It is a relatively new structure that was first created by the US state of Wyoming under the Wyoming Limited Liability Act of 1977. Wyoming's example was followed by Florida in 1982 and all US states have since enacted LLC legislation. The state of Delaware is usually considered as the preferred domicile for a US LLC because of a comparative lack of regulations and bureaucracy. An LLC has corporate form and personality but is categorised as a partnership under the Internal Revenue Code of the USA. As such, an LLC is not separately taxable but rather its income is taken to flow through to its members who are taxed according to US principles as though they had received the income directly. Non-US persons are only taxed on US-source income or income connected with the conduct of a US trade or business. If the LLC earns only income which falls outside this definition and the members of the LLC are non-US persons with no US presence, then no tax would be payable either by the LLC or by its members.

Having non-US individuals or companies as the members can therefore create a non-taxable structure. If an LLC had individual members, those members would most probably be taxed on profits received from the LLC in their country of residence, hence the recommended structure is to have two offshore companies (we recommend TCI companies) as the members.

Following the US lead, many offshore jurisdictions have passed legislation enabling the incorporation of LLC structures. These are primarily used to structure joint ventures between US and non-US corporations or persons. A non-US corporation or person may gain a considerable tax advantage by structuring their affairs offshore, whereas a US corporation may lose tax credits in the country in which they are investing which would be available if they made a direct investment. The same criteria would not generally apply to a non-US person or corporation. The offshore LLC may therefore be structured so that the income attributable to the US corporation flows through complete with tax credits still attached whereas the income attributed to the non-US person or corporation may be rolled up offshore.

Most of the offshore jurisdictions allow for the incorporation of an LLC, but the Bahamas, Cayman Islands, Isle of Man and TCI companies are particularly suitable. In all cases the relevant local legislation seeks to create a vehicle that has corporate form but which will be characterised as a partnership by the US Inland Revenue Service, thereby creating an offshore entity which is tax neutral for US persons but may have tax advantages for non-US persons.

### **Insurance Companies**

There are a number of offshore jurisdictions that are keen to encourage the establishment of insurance companies that, like banks, bring employment and investment to the country of incorporation, and generally enhance its reputation and its range of financial services. In a number of OFCs it is possible to incorporate insurance companies that pay no tax on their premium or investment income. St Vincent and the Seychelles are currently two of the easier places in which to set up an insurance company.

### **Captive Insurance Companies**

Captive insurance companies are often formed by multinational companies to insure and re-insure the risks of subsidiaries and affiliates. Captive insurance companies are particularly suitable for the shipping and petroleum industries and for the insurance of risks that might only be insurable at prohibitive premiums. Bermuda and Guernsey have long been favoured as domiciles for the incorporation of captive insurance companies with countries such as the Isle of Man, Gibraltar and the Turks & Caicos Islands now competing for a share of this growing market.

## 7. Jurisdiction Profiles

### 7.1 BAHAMAS

1.	Company Law:	The Companies Act, 1992 and the International Business Companies (IBC) Act, 2000.
2.	Type of company:	IBC.
3.	Standard Capital:	USD 50,000 being the maximum capital for the minimum duty payable annually.
4.	Annual fees paid to authorities:	USD350.
5.	Taxation rates applied to companies generally:	Nil.
6.	Length of time to incorporate:	24 hours. Ready-made companies are available.
7.	Minimum members:	Minimum one, who may be individual or corporate.
8.	Registered office:	Yes, must be maintained in the Bahamas at the address of a licensed management company or law firm. A local registered agent must also be appointed.
9.	Directors:  Must a director / secretary be resident?	Minimum one, who may be individual or corporate. A register of directors must be filed with the Registrar and is open to public inspection.  No.
10.	Is Annual General Meeting required?	No.
11.	Annual return:  Must financial statements be prepared and/or audited?	Not required.  Company is required to keep financial records reflecting financial position of the company but there is no need to record or file these with the authorities.
12.	Is disclosure of profits required	No.

	by filing balance sheets with annual returns?	
13.	Necessary to keep share register? Necessary to file share register with Registrar? Share register open to inspection by public?	Yes, at registered office.  No.  No, but can be inspected by other members.
14.	Any exchange controls or other financial restraints imposed?	None.
15.	Is redomiciliation into the jurisdiction allowed?	Yes.
16.	Is redomiciliation out of the jurisdiction allowed?	Yes.
17.	Language of incorporation:	English.
18.	Confidentiality:	No specific statutory provisions governing secrecy in relation to companies, but English law, which applies within the jurisdiction imposes a common law duty on professionals to keep the affairs of their clients confidential.
19.	Are bearer shares allowed?	No.
20.	ADVANTAGES	
	Flexible legislation Very quick formation procedure Good name availability Not affected by EU savings directive. 20 year guarantee against tax which runs from incorporation Excellent banking services – 450 banks	
21.	DISADVANTAGES	
	Frequent changes in legislation Poor legal services as no foreign lawyers allocated to practice in jurisdiction	

## 7.2 BELIZE

1.	Company Law:	The International Business Companies Act 1990.
2.	Type of company:	International Business Company - IBC.
3.	Standard Capital:	USD 50,000 would generally be used because it is the maximum level for which minimum Government fees apply.
4.	Annual fees paid to authorities:	USD 100.
5.	Taxation rates applied to companies generally:	Nil.
6.	Length of time to incorporate:	24 hours. Ready-made companies are available.
7.	Minimum members:	Minimum one, who may be individual or corporate.
8.	Registered office:	Yes, must be maintained in Belize at the address of a licensed registered agent. A local registered agent must also be appointed.
9.	Directors:	Minimum one, who may be individual or corporate.
	Must a director/secretary be resident?	No.
10.	Is Annual General Meeting required?	No.
11.	Annual return:	None.
	Must financial statements be prepared and/or audited?	Company is required to keep financial records reflecting financial position of the company but these need not be lodged or filed with the authorities.
12.	Is disclosure of profits required by filing balance sheets with annual returns?	No.

13.	Necessary to keep share register? Necessary to file share register with Registrar? Share register open to inspection by public?	Yes, at registered office.  No.  No, but can be inspected by other members.
14.	Any exchange controls or other financial restraints imposed?	None.
15.	Is redomiciliation into the jurisdiction allowed?	Yes.
16.	Is redomiciliation out of the jurisdiction allowed?	Yes.
17.	Language of incorporation:	English.
18.	Confidentiality:	No specific statutory provisions governing secrecy in relation to companies, but English law, which applies within the jurisdiction imposes a common law duty on professionals to keep the affairs of their clients confidential.
19.	Are bearer shares allowed?	No.
20.	ADVANTAGES	
	Flexible legislation, based on that of the British Virgin Islands. Quick, simple and cheap incorporation. Not affected by EU savings directive.	
21.	DISADVANTAGES	
	Some commentators have worries about the stability of the country. Poor image due to lack of marketing.	

## 7.3 BERMUDA

1.	Company Law:	The Companies Act, 1981.
2.	Type of company:	Exempted company.
3.	Standard Capital:	Minimum authorised capital of USD12,000 (or equivalent) required and both initial/annual fees will be higher if this figure is exceeded.
4.	Annual fees paid to authorities:	USD1,780.
5.	Taxation rates applied to companies generally:	Nil, until at least March 2016.
6.	Length of time to incorporate:	4 weeks.
7.	Minimum members:	Minimum one, who may be individual or corporate.
8.	Registered office:	Yes, must be maintained in Bermuda at the address of a licensed management company or law firm. A local registered agent must also be appointed.
9.	Directors:  Must a director / secretary be resident?	Minimum two, individuals only. A register of directors must be filed with the Registrar and is open to public inspection  Yes.
10	Is Annual General Meeting required?	Yes.
11	Annual return:  Must financial statements be prepared and/or audited?	No.  These must be prepared but the audit may be waived if all members and directors agree.
12	Is disclosure of profits required by filing balance sheets with annual returns?	No.

13	Necessary to keep share register? Necessary to file share register with Registrar? Share register open to inspection by public?	Yes, at registered office.  Yes.  Yes.
14	Any exchange controls or other financial restraints imposed?	None.
15	Is redomiciliation into the jurisdiction allowed?	Yes.
16	Is redomiciliation out of the jurisdiction allowed?	Yes.
17	Language of incorporation:	English.
18	Confidentiality:	No specific statutory provisions governing secrecy in relation to companies, but English law, which applies within the jurisdiction imposes a common law duty on professionals to keep the affairs of their clients confidential.
19	Are bearer shares allowed?	No.
20	ADVANTAGES	
	Blue chip registration. Approved for listing purposes in Hong Kong. Very well regulated jurisdiction.	
21	DISADVANTAGES	
	Slow.	
	Expensive.	

## 7.4 BRITISH VIRGIN ISLANDS (BVI)

1.	Company Law:	International Business Companies Act, Cap.291.
2.	Type of company:	International Business Company - IBC.
3.	Standard Capital:	Minimum of either one share of par, or no par value but usually USD 50,000 being the maximum capital for the minimum duty, payable initially and annually.
4.	Annual fees paid to authorities:	Companies with an authorised capital up to USD 50,000 pay USD 300 per year. Companies with a share capital exceeding USD 50,000 pay USD 1000 per year. Companies with a share capital that does not exceed USD 50,000 and having a portion or all of its shares with no par value pay USD 350 per year. Any company that retains the ability to issue bearer shares pays USD 1000 per annum.
5.	Taxation rates applied to companies generally:	Nil.
6.	Length of time to incorporate:	24 hours. Ready-made companies are available.
7.	Minimum members:	Minimum one, who may be individual or corporate.
8.	Registered office:	Yes, must be maintained in the BVI. A local registered agent must also be appointed.
9.	Directors:  Must a director / secretary be resident?	Minimum one, who may be individual or corporate. Details of directors may be filed with Registrar but not a requirement.  No.
10	Is Annual General Meeting required?	No.
11	Annual return:	Each company must file a short statement indicating that it has traded mainly outside the islands and has complied with

	Must financial statements be prepared and/or audited?	the various statutory requirements.  Company is required to keep financial records reflecting financial position of the company.
12	Is disclosure of profits required by filing balance sheets with annual returns?	No.
13	Necessary to keep share register?  Necessary to file share register with Registrar?  Share register open to inspection by public?	Yes, at registered office.  No.  No.
14	Any exchange controls or other financial restraints imposed?	None.
15	Is redomiciliation into the jurisdiction allowed?	Yes.
16	Is redomiciliation out of the jurisdiction allowed?	Yes.
17	Language of incorporation:	English.
18	Confidentiality:	No specific statutory provisions governing secrecy in relation to companies, but English law, which applies within the jurisdiction imposes a common law duty on professionals to keep the affairs of their clients confidential.
19	Are bearer shares allowed?	Yes, but must be immobilised and attract greater charges – see above.
20	ADVANTAGES	
	Highly popular jurisdiction.  Law is familiar to most lawyers who deal with offshore matters.  Flexible legislation allows the operation of the company to be almost totally dependant on the requirements of the client.	
21	DISADVANTAGES	
	Poor legal and banking services.  Lack of name availability.	

	Not a recommended jurisdiction for high profile trading corporations.
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## 7.5 CAYMAN ISLANDS

1.	Company Law:	The Companies Law (2002 Revision).
2.	Type of company:	Exempt.
3.	Standard Capital:	USD 50,000 would generally be used. This is the maximum level for which minimum Government fees apply.
4.	Annual fees paid to authorities:	Companies with an authorised capital up to USD 50,000 pay USD 575 per year. Companies with an authorised capital exceeding 50,000 but up to USD 1 million pay USD 806 per year. Companies with an authorised capital exceeding USD 1 million but up to USD 2 million pay USD 1,690 per year. Companies with an authorised capital exceeding USD 2 million pay USD 2,402 per year.
5.	Taxation rates applied to companies generally:	Nil.
6.	Length of time to incorporate:	3 to 5 days.
7.	Minimum members:	Minimum one, who may be individual or corporate.
8.	Registered office:	Yes, must be maintained in the Cayman islands at the address of a licensed management company or law firm. A local registered agent must also be appointed.
9.	Directors:  Must a director / secretary be resident?	Minimum one, who may be individual or corporate. A register of directors must be filed with the Registrar but is not open to public inspection.  No.
10	Is Annual General Meeting required?	No.
11	Annual return:  Must financial statements be	Each company must file an annual return, which takes the form of a simple declaration.

	prepared and/or audited?	No.
12	Is disclosure of profits required by filing balance sheets with annual returns?	No.
13	Necessary to keep share register? Necessary to file share register with Registrar? Share register open to inspection by public?	Yes, at registered office.  No.  No, but can be inspected by other members.
14	Any exchange controls or other financial restraints imposed?	None.
15	Is redomiciliation into the jurisdiction allowed?	Yes.
16	Is redomiciliation out of the jurisdiction allowed?	Yes.
17	Language of incorporation:	English.
18	Confidentiality:	The Confidential Relationships (Preservation) Law makes it a criminal offence to divulge confidential information or to wilfully obtain or attempt to obtain confidential information relating to a Cayman Island company. However subsequent legislation and mutual assistance treaties whereby there will be disclosure of information in criminal offences, including tax offences, are eroding this confidentiality.
19	Are bearer shares allowed?	Yes, but must be immobilised by lodging with an authorised custodian within the islands which brings additional costs.
20	ADVANTAGES	
	540 banks are represented on the islands Top legal services Premier hedge fund jurisdiction.	
21	DISADVANTAGES	
	Expensive.	

## 7.6 DUBAI

1.	Company Law:	Jebel Ali Free Zone (JAFZ) Offshore Companies Regulations 2003.
2.	Type of company:	JAFZ offshore company.
3.	Standard Capital:	As there are no higher costs payable for larger share capitals we would generally recommend an authorised capital of AED1 million
4.	Annual fees paid to authorities:	USD 545.
5.	Taxation rates applied to companies generally:	Nil.
6.	Length of time to incorporate:	1 to 2 weeks.
7.	Minimum members:	Minimum one, who may be individual or corporate.
8.	Registered office:	Yes, must be maintained in Dubai at the address of a licensed management company or law firm. A local registered agent must also be appointed.
9.	Directors:  Must a director / secretary be resident?	Minimum two, individuals only. A register of directors (must be filed with the authorities) but it is not open to public inspection. A secretary, who must be an individual, is necessary.  No.
10	Is Annual General Meeting required?	Yes.
11	Annual return:	Every company must keep accounting records and these must be preserved for 10 years from the date on which they are prepared. Accounts must be approved by the directors and signed by one of them.  Every company must appoint an Auditor (from the

	Must financial statements be prepared and/or audited?	approved list), who shall examine and report on the accounts in accordance with the regulations.
12	Is disclosure of profits required by filing balance sheets with annual returns?	No.
13	Necessary to keep share register? Necessary to file share register with Registrar? Share register open to inspection by public?	Yes, at registered office.  No.  No, but can be inspected by other members.
14	Any exchange controls or other financial restraints imposed?	None.
15	Is redomiciliation into the jurisdiction allowed?	Yes.
16	Is redomiciliation out of the jurisdiction allowed?	Yes.
17	Language of incorporation:	English.
18	Confidentiality:	There are no specific statutory provisions governing confidentiality in Dubai.
19	Are bearer shares allowed?	No.
20	ADVANTAGES	
	<p>Not affected by EU savings directive.</p> <p>Not a member of the OECD or targeted by OECD as tax haven so no exchange of information</p> <p>100% foreign ownership is allowed.</p> <p>Company can own real estate properties on Palm islands, or any properties owned by Nakheel Company LLC or any other real estate approved by the JAFZ Authority.</p> <p>Company can hold an account in a bank in the UAE for the purpose of conducting routine operational transactions.</p> <p>One residence visa will be issued for one director - if the Offshore Company maintains an office in the JAFZ.</p>	
21	DISADVANTAGES	

	<p>The Company will not be allowed to carry on business with people who are resident in the UAE or carry out any trade in the JAFZ or in the UAE, unless they have first obtained an appropriate license from the relevant competent authority.</p> <p>The registrar has the power to appoint competent inspectors to investigate the affairs of the offshore Company. Upon discretion of the registrar, inspection costs may be charged to any office bearer of the Company.</p> <p>Not an English common law jurisdiction.</p>
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## 7.7 GUERNSEY

1.	Company Law:	The Companies (Guernsey) Law, 1994-1996; Protected Cell Companies Ordinance, 1997; Guarantee Companies Ordinance, 1997; Amalgamation of Companies Ordinance, 1997; Migration of Companies Ordinance, 1997; Protected Cell Companies (Amendment) Ordinance, 1998; Companies (Financial Assistance for Acquisition of Own Shares) Ordinance, 1998; Companies (Purchase of Own Shares) Ordinance, 1998; and Companies (Shares of No Par Value) Ordinance, 2002.
2.	Type of company:	Exempt.
3.	Standard Capital:	GBP 10,000 is the maximum figure for which minimum costs apply.
4.	Annual fees paid to authorities:	GBP100 filing fee and GBP 600 exempt duty.
5.	Taxation rates applied to companies generally:	20%, but flat annual rate of GBP600 payable for exempt companies.
6.	Length of time to incorporate:	21 working days.
7.	Minimum members:	Minimum two, who may be individual or corporate.
8.	Registered office:	Yes, must be maintained in Guernsey at the address of a licensed management company or law firm. A local registered agent must also be appointed.
9.	Directors:  Must a director / secretary be resident?	Minimum one, who may be individual or corporate. A register of directors must be filed at the registered office and with the Registrar and is open to public inspection.  No.
10	Is Annual General Meeting required?	No.
11	Annual return:	An annual return which gives details of the current

	Must financial statements be prepared and/or audited?	directors and shareholders and any change in the shareholders since the last return or, in the case of a company filing its first annual return since the date of incorporation, must be filed at the public registry in January of each year and a filing fee of GBP100 is payable. It should be noted that fines are payable for late filing.  Yes.
12	Is disclosure of profits required by filing balance sheets with annual returns?	No.
13	Necessary to keep share register?  Necessary to file share register with Registrar?  Share register open to inspection by public?	Yes, at registered office.  Yes.  Yes.
14	Any exchange controls or other financial restraints imposed?	None.
15	Is redomiciliation into the jurisdiction allowed?	Yes.
16	Is redomiciliation out of the jurisdiction allowed?	Yes.
17	Language of incorporation:	English.
18	Confidentiality:	No specific statutory provisions governing confidentiality in relation to companies, but English law, which applies within the jurisdiction imposes a common law duty on professionals to keep the affairs of their clients confidential.
19	Are bearer shares allowed?	No.
20	ADVANTAGES	
	Blue chip reputation.	
21	DISADVANTAGES	

	<p>Expensive.</p> <p>Details on beneficial owner must be disclosed to the authorities prior to registration.</p> <p>Cumbersome and difficult to arrange.</p>
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## 7.8 JERSEY

1.	Company Law:	The Companies (Jersey) Law 1991, as amended (“the Law”) and subordinate legislation.
2.	Type of company:	Exempt.
3.	Standard Capital:	GBP 10,000 is the maximum figure for which minimum costs apply.
4.	Annual fees paid to authorities:	GBP150 filing fee plus GBP 600 exempt tax.
5.	Taxation rates applied to companies generally:	20%, but flat annual rate of GBP600 payable for exempt companies.
6.	Length of time to incorporate:	10 working days.
7.	Minimum members:	Minimum two, who may be individual or corporate.
8.	Registered office:	Yes, must be maintained in Jersey at the address of a licensed management company or law firm. A local registered agent must also be appointed.
9.	Directors:  Must a director / secretary be resident?	Minimum one, individuals only. A register of directors must be filed with the Registrar but is not open to public inspection.  No.
10	Is Annual General Meeting required?	No.
11	Annual return:  Must financial statements be prepared and/or audited?	Each company must file a short statement indicating that it has traded mainly outside the islands and has complied with the various statutory requirements.  Company is required to keep financial records reflecting financial position of the company.
12	Is disclosure of profits required by filing balance	No.

	sheets with annual returns?	
13	Necessary to keep share register? Necessary to file share register with Registrar? Share register open to inspection by public?	Yes, at registered office.  Yes.  Yes.
14	Any exchange controls or other financial restraints imposed?	None.
15	Is redomiciliation into the jurisdiction allowed?	Yes.
16	Is redomiciliation out of the jurisdiction allowed?	Yes.
17	Language of incorporation:	English.
18	Confidentiality:	No specific statutory provisions governing confidentiality in relation to companies, but English law, which applies within the jurisdiction imposes a common law duty on professionals to keep the affairs of their clients confidential.
19	Are bearer shares allowed?	No.
20	ADVANTAGES	
	Blue chip reputation.	
21	DISADVANTAGES	
	Expensive – most Jersey practitioners now use cheaper jurisdictions. Details on beneficial owner must be disclosed to the authorities prior to registration. Time-consuming and cumbersome to arrange.	

## 7.9 CYPRUS

1.	Company Law:	Companies Law, Cap 113 that resembles the English Companies Act, 1948.
2.	Type of company:	International Business Company - IBC.
3.	Capital requirements:	USD 50,000 being the maximum capital for the minimum duty payable annually.
4.	Annual fees paid to authorities:	Euros 15.
5.	Taxation rates applied to companies generally:	10% uniform corporate tax rate but many forms of income are exempt.
6.	Length of time to incorporate:	7 days after receipt of bank references on beneficial owners.
7.	Minimum members:	Minimum one, who may be individual or corporate.
8.	Registered office:	Yes, must be maintained in Cyprus at the address of a licensed management company or law firm. A local registered agent must also be appointed.
9.	Directors:	Minimum one, who may be individual or corporate. A register of directors must be filed with the Registrar and is open to public inspection.
	Must a director / secretary be resident?	No, but a majority of Cyprus resident directors would be required if the company wished to utilise the tax treaties.
10	Is Annual General Meeting required?	No.
11	Annual return:	Companies need to comply with the following filings annually: Submission of the company annual return to the Registrar of Companies and,
	Must financial statements be prepared and/or audited?	Yes for submission to the tax authorities.
12	Is disclosure of profits	No.

	required by filing balance sheets with annual returns?	
13	Necessary to keep share register? Necessary to file share register with Registrar? Share register open to inspection by public?	Yes, at registered office.  Yes.  Yes.
14	Any exchange controls or other financial restraints imposed?	Yes, foreign individuals and corporations need exchange control permission to hold shares in a Cyprus company.
15	Is redomiciliation into the jurisdiction allowed?	Yes.
16	Is redomiciliation out of the jurisdiction allowed?	Yes.
17	Language of incorporation:	English.
18	Confidentiality:	Although details of the shareholders and directors appear on the public file, statutory confidentiality provisions protect the details of the beneficial owners supplied to the Central Bank.
19	Are bearer shares allowed?	No.
20	ADVANTAGES	
		Full member of the EU so can utilise directive 90/435 – ideal as holding company. Good range of tax treaties, especially with Eastern Europe and, in particular, Russia.
21	DISADVANTAGES	
		Tainted by allegations of Russian money laundering.

## 7.10 GIBRALTAR

1.	Company Law:	Companies Ordinance Act 1984 as amended, based on the UK Companies Act 1929 (as modified).
2.	Type of company:	Exempt.
3.	Standard Capital:	GBP1,000 is the standard incorporation fee.
4.	Annual fees paid to authorities:	USD225.
5.	Taxation rates applied to companies generally:	Nil.
6.	Length of time to incorporate:	5 days. Ready-made companies are available.
7.	Minimum members:	Minimum one, who may be individual or corporate.
8.	Registered office:	Yes, must be maintained in Gibraltar at the address of a licensed management company or law firm. A local registered agent must also be appointed.
9.	Directors:  Must a director / secretary be resident?	Minimum one, who may be individual or corporate. A register of directors must be filed with the Registrar and is open to public inspection. A secretary is necessary.  No.
10	Is Annual General Meeting required?	No.
11	Annual return:  Must financial statements be prepared and/or audited?	An annual return must be filed each year showing details of shareholders and directors. With effect from 1 <sup>st</sup> April 2000 all Gibraltar companies must file annual accounts with the Registrar.  These must be prepared and filed but most companies escape audit requirement.
12	Is disclosure of profits required by filing balance	Yes.

	sheets with annual returns?	
13	Necessary to keep share register? Necessary to file share register with Registrar? Share register open to inspection by public?	Yes, at registered office.  No.  Yes.
14	Any exchange controls or other financial restraints imposed?	None.
15	Is redomiciliation into the jurisdiction allowed?	Yes.
16	Is redomiciliation out of the jurisdiction allowed?	Yes.
17	Language of incorporation:	English.
18	Confidentiality:	No specific statutory provisions governing confidentiality in relation to companies, but English law, which applies within the jurisdiction imposes a common law duty on professionals to keep the affairs of their clients confidential.
19	Are bearer shares allowed?	No.
20	ADVANTAGES	
	Well-regulated and respected EU jurisdiction where costs are somewhat less than in it's other EU competitors.	
21	DISADVANTAGES	
	Some political instability with the Spanish claim for Sovereignty.	

## 7.11 HONG KONG

1.	Company Law:	English Common Law supplemented by the 1993 Companies Ordinance Cap.32 (as amended).
2.	Type of company:	Private corporation.
3.	Standard Capital:	HK\$1,000.00 is the maximum authorised capital which attracts the minimum capital duty.
4.	Annual fees paid to authorities:	USD 15.
5.	Taxation rates applied to companies generally:	17.5% on Hong Kong source income only.
6.	Length of time to incorporate:	2 to 3 weeks (or 6 weeks if a Chinese representation of the name is to be included on the Certificate of Incorporation). Ready-made companies are available for immediate purchase.
7.	Minimum members:	Minimum one, who may be individual or corporate.
8.	Registered office:	Yes, must be maintained in Hong Kong.
9.	Directors:	Minimum one, who may be individual or corporate. A register of directors must be filed with the Registrar and is open to public inspection
	Must a director / secretary be resident?	Directors need not be resident, but a local secretary is required.
10	Is Annual General Meeting required?	No.
11	Annual return:	Hong Kong companies are required to file full audited accounts and must also prepare and file an annual return that gives details of the current directors and of the shareholders who have held shares in the company at any time during the year.
	Must financial statements be prepared and/or audited?	Yes.

12	Is disclosure of profits required by filing balance sheets with annual returns?	No.
13	Necessary to keep share register? Necessary to file share register with Registrar? Share register open to inspection by public?	Yes, at registered office.  Yes.  Yes.
14	Any exchange controls or other financial restraints imposed?	None.
15	Is redomiciliation into the jurisdiction allowed?	No.
16	Is redomiciliation out of the jurisdiction allowed?	No.
17	Language of incorporation:	English.
18	Confidentiality:	No specific statutory provisions governing confidentiality in relation to companies, but English law, which applies within the jurisdiction imposes a common law duty on professionals to keep the affairs of their clients confidential.
19	Are bearer shares allowed?	No.
20	ADVANTAGES	
	Not affected by EU savings directive. Not a member of the OECD. World-class banking and professional services.	
21	DISADVANTAGES	
	Expensive audit costs. Careful planning is required to avoid Hong Kong tax on profits.	

## 7.12 ISLE OF MAN

1.	Company Law:	The Companies Acts, 1931 to 1993; International Business Act 1994; Limited Liability Companies Act 1996 – 1999; Insurance Act 1986 and the Companies (Transfer of Domicile) Act 1998. The Companies, etc (Amendment) Act 2003 will come into force during 2004.
2.	Main Type of company:	Exempt.
3.	Standard Capital:	£2,000 is the maximum capital for which minimum registration fees apply.
4.	Annual fees paid to authorities:	GBP 60 filing fee.
5.	Taxation rates applied to companies generally:	Corporate tax rates vary from 10-18% but most companies apply for exempt status paying a flat rate £450 tax per year.
6.	Length of time to incorporate:	2 days. Ready-made companies are available.
7.	Minimum members:	Minimum one, who may be individual or corporate.
8.	Registered office:	Yes, must be maintained in the Isle of Man at the address of a licensed management company or law firm. A local registered agent must also be appointed.
9.	Directors:  Must a director / secretary be resident?	Minimum two, individuals only. A register of directors must be filed with the Registrar and is open to public inspection.  A professionally qualified local secretary and a local director is necessary for exempt companies.
10	Is Annual General Meeting required?	Yes.
11	Annual return:  Must financial statements be prepared and/or audited?	Must be submitted annually on anniversary of incorporation.  Company is required to keep financial records reflecting financial position of the company.

12	Is disclosure of profits required by filing balance sheets with annual returns?	No.
13	Necessary to keep share register? Necessary to file share register with Registrar? Share register open to inspection by public?	Yes, at registered office.  Yes.  Yes.
14	Any exchange controls or other financial restraints imposed?	None.
15	Is redomiciliation into the jurisdiction allowed?	Yes.
16	Is redomiciliation out of the jurisdiction allowed?	Yes.
17	Language of incorporation:	English.
18	Confidentiality:	No specific statutory provisions governing confidentiality in relation to companies, but English law, which applies within the jurisdiction imposes a common law duty on professionals to keep the affairs of their clients confidential.
19	Are bearer shares allowed?	No.
20	ADVANTAGES	
	Blue chip jurisdiction. Quick and efficient. Relatively inexpensive compared with other EU jurisdictions. Well-regulated & respected, one of the few offshore areas where a vat number can be obtained for EU trading.	
21	DISADVANTAGES	
	The need for local directors for exempt status means only suitable where the company can be fully offshore managed.	

## 7.13 MALTA

1.	Company Law:	Companies Act, 1996.
2.	Type of company:	International Holding Company (“IHC”) and International Trading Company (“ITC”).
3.	Standard Capital:	LM500 (Approx. €1,100) is the maximum that attracts the minimum capital duty.
4.	Annual fees paid to authorities:	Euros 200.
5.	Taxation rates applied to companies generally:	35% but reduced to 4.2% for ITC’s and between 0 and 6.5% for IHC’s.
6.	Length of time to incorporate:	2 weeks.
7.	Minimum members:	Minimum two, who may be individual or corporate.
8.	Registered office:	Yes, must be maintained in Malta at the address of a licensed management company or law firm. A local registered agent must also be appointed.
9.	Directors:  Must a director / secretary be resident?	<p>Minimum one, who may be individual or corporate. A register of directors must be filed with the Registrar and is open to public inspection.</p> <p>A licensed Maltese “nominee company” must be appointed as secretary.</p> <p>Local directors are not required but tax treaty relief would not be afforded to any company that does not have a majority of directors resident in Malta.</p>
10	Is Annual General Meeting required?	No.
11	Annual return:	Must be filed.

	Must financial statements be prepared and/or audited?	Yes.
12	Is disclosure of profits required by filing balance sheets with annual returns?	No.
13	Necessary to keep share register? Necessary to file share register with Registrar? Share register open to inspection by public?	Yes, at registered office.  No.  No, but can be inspected by other members.
14	Any exchange controls or other financial restraints imposed?	None.
15	Is redomiciliation into the jurisdiction allowed?	Yes.
16	Is redomiciliation out of the jurisdiction allowed?	Yes.
17	Language of incorporation:	English.
18	Confidentiality:	The Professional Secrecy Act has established a high common standard of confidentiality for all professional practitioners. Those who violate professional secrecy may be prosecuted under Section 27 of the Criminal Code and on conviction may be liable to fine or imprisonment.
19	Are bearer shares allowed?	No.
20	ADVANTAGES	
	<p>Full member of European Union so can take advantage of EU Directive 90/435 so may be ideal holding company location and recipient of royalties and interest from EU.</p> <p>Within EU VAT area.</p> <p>Ideal location for holding property in Portugal.</p> <p>Unusual tax system. High tax rates are actually paid but reclaimed by shareholders so no question of the company being a low tax entity.</p> <p>Good range of tax treaties that should be effective due to high tax paid by Malta companies – see above.</p>	
21	DISADVANTAGES	

	Full audit required but costs relatively low. Slightly cumbersome incorporation and administration processes.
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## 7.14 MAURITIUS

1.	Company Law:	Companies Act 2001 (repealing and replacing Companies Act 1984 and International Companies Act 1994) and the Financial Services Development Act 2001.
2.	Type of company:	GBC2 Global Business Company – Category 2
3.	Standard Capital:	USD 100,000 is the norm. Shares need not have a par value. Authorised Share Capital is described as the Stated Capital and fractional shares are permitted.
4.	Annual fees paid to authorities:	USD200
5.	Taxation rates applied to companies generally:	Nil.
6.	Length of time to incorporate:	48 hours but ready-made companies are available.
7.	Minimum members:	One, who may be individual or corporate.
8.	Registered office:	Yes, must be maintained in Mauritius at the address of a licensed management company or law firm. A local registered agent must also be appointed.
9.	Directors:  Must a director / secretary be resident?	Minimum one, who may be individual or corporate. A register of directors must be maintained at the registered office but only members have a right of inspection.  No.
10.	Is Annual General Meeting required?	Yes.
11.	Annual return:  Must financial statements be audited?	No annual returns need to be filed where a company holds a Global Business Licence.  No.
12.	Is disclosure of profits required	No.

	by filing balance sheets with annual returns?	
13.	Necessary to keep share register? Necessary to file share register with Registrar? Share register open to inspection by public?	Yes, at registered office. Only members have a right of inspection.  Yes.  No.
14.	Are there any exchange controls or other financial restraints imposed upon a company?	None.
15.	Is redomiciliation into the jurisdiction allowed?	Yes.
16.	Is redomiciliation out of your country provided for?	Yes.
17.	Language of incorporation:	English.
18.	Confidentiality:	The Companies Act 2001 & Financial Services Development Act (FSDA) require that information be kept confidential except on proof that the information is required for the purpose of enquiry into specified criminally related activities. The Registrar and all his officers have taken an oath of office to protect confidentiality.  No company search is allowed.
19.	Are bearer shares allowed?	No.
20.	ADVANTAGES	
	No need to set out objects in a Constitution. Constitutions are optional. Well regulated jurisdiction from inception and therefore has largely remained free from scandal. Can be converted to a GBC1 and access Double Taxation Agreements. Can be incorporated as limited by both shares and guarantee.	
21.	DISADVANTAGES	
	Becoming cumbersome and time-consuming due to additional declarations required over and above those used in most other areas.	

## 7.15 NETHERLANDS

1.	Company Law:	Netherlands Civil Code.
2.	Type of company:	BV.
3.	Standard Capital:	Minimum authorized capital of EURO 90,000 of which minimally EURO 18,000 must be paid up.
4.	Annual fees paid to authorities:	None.
5.	Taxation rates applied to companies generally:	35%.
6.	Length of time to incorporate:	12 weeks. Ready-made companies are available.
7.	Minimum members:	Minimum one, who may be individual or corporate.
8.	Registered office:	Yes, must be maintained in the Netherlands at the address of a licensed management company or law firm and register itself with a local Chamber of Commerce. A local registered agent must also be appointed.
9.	Directors:  Must a director / secretary be resident?	Minimum one, who may be individual or corporate. A register of directors must be filed with the Registrar and is open to public inspection.  No, but this is advisable.
10	Is Annual General Meeting required?	No.
11	Annual return:  Must financial statements be prepared and/or audited?	An annual return which gives details of all those who have held shares throughout the year and the current directors must be filed with the Chamber of Commerce and the local tax department.  Yes.

12	Is disclosure of profits required by filing balance sheets with annual returns?	No.
13	Necessary to keep share register? Necessary to file share register with Registrar? Share register open to inspection by public?	Yes, at registered office.  Yes.  Yes.
14	Any exchange controls or other financial restraints imposed?	None.
15	Is redomiciliation into the jurisdiction allowed?	No.
16	Is redomiciliation out of the jurisdiction allowed?	No.
17	Language of incorporation:	English.
18	Confidentiality:	There are no confidentiality laws in the Netherlands. Exchange of information may take place under the terms of the many tax treaties to which The Netherlands is a party.
19	Are bearer shares allowed?	No.
20	ADVANTAGES	
	Stable high tax country – not a tax haven. Massive range of tax treaties. <u>The jurisdiction for licensing and finance companies.</u> Historically one of the better jurisdictions for participation exemption (holding) companies.	
21	DISADVANTAGES	
	Expensive. Civil law system is cumbersome.	

## 7.16 SAMOA

1.	Company Law:	International Companies Act 1987 regulates the formation and operation of international companies
2.	Type of company:	International Company ("IC").
3.	Standard Capital:	The incorporation fees are fixed irrespective of authorised share capital.
4.	Annual fees paid to authorities:	USD300 for 1 year, USD1,000 for 5 years, USD1,500 for 10 years and USD2000 for 20 years.
5.	Taxation rates applied to companies generally:	Nil.
6.	Length of time to incorporate:	24 hours.
7.	Minimum members:	Minimum one, who may be individual or corporate.
8.	Registered office:	Yes, must be maintained in Samoa at the address of a licensed management company or law firm. A local registered agent must also be appointed.
9.	Directors:  Must a director / secretary be resident?	Minimum one, who may be individual or corporate. A register of directors must be filed with the Registrar and is open to public inspection.  A local secretary is necessary.
10	Is Annual General Meeting required?	No.
11	Annual return:  Must financial statements be prepared and/or audited?	No.  Company is required to keep financial records reflecting financial position of the company. Audit not required.
12	Is disclosure of profits required by filing balance sheets with annual returns?	No.
13	Necessary to keep share	Yes, at registered office.

	register? Necessary to file share register with Registrar? Share register open to inspection by public?	No.  No, but can be inspected by other members.
14	Any exchange controls or other financial restraints imposed?	None.
15	Is redomiciliation into the jurisdiction allowed?	Yes.
16	Is redomiciliation out of the jurisdiction allowed?	Yes.
17	Language of incorporation:	English.
18	Confidentiality:	No specific statutory provisions governing confidentiality in relation to companies, but English law, which applies within the jurisdiction imposes a common law duty on professionals to keep the affairs of their clients confidential.
19	Are bearer shares allowed?	No.
20	ADVANTAGES	
	User-friendly legislation. As Samoa is across the international dateline, incorporation can be achieved yesterday.	
21	DISADVANTAGES	
	Almost total lack of professional services.	

## 7.17 SINGAPORE

1.	Company Law:	Companies Act, Cap 50.
2.	Type of company:	Company limited by shares, company limited by guarantee.
3.	Standard Capital:	SGD 100,000 is the standard incorporation capital.
4.	Annual fees paid to authorities:	50 SGD
5.	Taxation rates applied to companies generally:	Nil, with appropriate structuring.
6.	Length of time to incorporate:	Incorporation usually takes around 2 weeks. Initial incorporation can in fact be achieved and confirmed within 48-72 hours with computer-generated verification whilst awaiting formal certification. Delays may occur where permission from Singapore statutory authorities are required.
7.	Minimum members:	Minimum two at incorporation, who may be individual or corporate. Single shareholder permitted after incorporation.
8.	Registered office:	Yes, must be maintained in Singapore.
9.	Directors:  Must a director / secretary be resident?	Minimum two, individuals only. One director must be resident in Singapore. A register of directors must be filed with the Registrar and is open to public inspection.  A local secretary and at least one local director are necessary.
10	Is Annual General Meeting required?	Yes.
11	Annual return:	Non-exempt Singapore companies must prepare full audited accounts and must keep a copy of such accounts at the registered office address. All except exempt private companies must file accounts on the public register. For financial years commencing on or after 15 May 2003, the audit requirement is also

	Must financial statements be prepared and/or audited?	removed for Exempt Private Companies. Companies are required to keep financial records reflecting financial position of the company.
12	Is disclosure of profits required by filing balance sheets with annual returns?	Yes.
13	Necessary to keep share register? Necessary to file share register with Registrar? Share register open to inspection by public?	Yes, at registered office.  Yes.  Yes.
14	Any exchange controls or other financial restraints imposed?	None.
15	Is redomiciliation into the jurisdiction allowed?	Yes, by registration as a foreign company in Singapore.
16	Is redomiciliation out of the jurisdiction allowed?	Yes, by de-registering as a foreign company in Singapore.
17	Language of incorporation:	English.
18	Confidentiality:	Section 47 of the Singapore Banking Act provides for banking secrecy and makes unauthorised disclosure in Singapore or elsewhere an offence, except as provided for by the Monetary Authority of Singapore's anti-money laundering regulations.
19	Are bearer shares allowed?	No.
20	ADVANTAGES	
	Not a member of the OECD. Not affected by EU savings directive. Good banking secrecy and ease of bank opening with wide range of international banks in Singapore. Range of tax treaties. English legal system. Good range of professional services.	
21	DISADVANTAGES	

	<p>Quite slow and bureaucratic. Directors personally liable for statutory compliance.</p>
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## 7.18 TURKS AND CAICOS ISLANDS (TCI)

1.	Company Law:	Companies Ordinance 1981 (as amended).
2.	Type of company:	Exempt.
3.	Standard Capital:	USD 5,000 is the maximum capital for which minimum registration fees apply.
4.	Annual fees paid to authorities:	USD300 for 1 year, USD1,000 for 5 years, USD1,500 for 10 years and USD2000 for 20 years.
5.	Taxation rates applied to companies generally:	Nil.
6.	Length of time to incorporate:	24 hours. Ready-made companies are available.
7.	Minimum members:	Minimum one, who may be individual or corporate.
8.	Registered office:	Yes, must be maintained in TCI at the address of a licensed registered agent. A local registered agent must also be appointed.
9.	Directors:  Must a director / secretary be resident?	Minimum one, who may be individual or corporate. Details of directors do not appear on the public file, except when filed voluntarily.  No.
10	Is Annual General Meeting required?	No.
11	Annual return:  Must financial statements be prepared and/or audited?	Each company must file a short statement indicating that it has traded mainly outside the islands and has complied with the various statutory requirements. No audit required.  Company is required to keep financial records reflecting financial position of the company but there is no need to lodge or record these with the authorities.
12	Is disclosure of profits required by filing balance sheets with annual returns?	No.

13	Necessary to keep share register? Necessary to file share register with Registrar? Share register open to inspection by public?	Yes, at registered office.  No.  No, but can be inspected by other members.
14	Any exchange controls or other financial restraints imposed?	None.
15	Is redomiciliation into the jurisdiction allowed?	Yes.
16	Is redomiciliation out of the jurisdiction allowed?	Yes.
17	Language of incorporation:	English.
18	Confidentiality:	Companies Ordinance and the Confidential Relationships Ordinance 1979 make it an offence anybody to reveal confidential information, including details of the owners and directors, about a TCI exempt company or to threaten to reveal such information.
19	Are bearer shares allowed?	Yes, but must be immobilised by lodging with an approved custodian.
20	ADVANTAGES	
	<p>Governing legislation modelled on the law of the Cayman Islands, widely regarded as the premier offshore jurisdiction. TCI therefore provide a similar yet relatively inexpensive alternative to the Cayman Islands.</p> <p>All companies get a twenty-year guarantee of exemption from future taxes and increases in government taxes.</p> <p>Very quick formation procedure.</p> <p>Good name availability.</p> <p>Good legal services.</p>	
21	DISADVANTAGES	
	<p>Due to a lack of marketing, TCI does not have as high a profile as many of its Caribbean competitors.</p>	

## 7.19 URUGUAY

1.	Company Law:	Company Law No. 16,060 of November 1989 applies to all legal and administrative matters. The SAFI is regulated and taxed by Law No. 11,073 of June 1948.
2.	Type of company:	SAFI – Sociedad Anonima Financiera de Inversion
3.	Standard Capital:	Minimum authorised capital is USD 50,000, and minimum paid in capital is 5% of the authorised amount. Ready-made companies have a standard authorised capital of USD 100,000.
4.	Annual fees paid to authorities:	None.
5.	Taxation rates applied to companies generally:	0.3% of net asset value.
6.	Length of time to incorporate:	3 to 4 months. Ready-made shelf companies are available.
7.	Minimum members:	One, individual or corporation.
8.	Registered office:	Yes, must be maintained in Uruguay. A local registered agent must also be appointed.
9.	Directors:	One, individual or corporation. Details of directors not filed with Registrar but must be lodged with tax office.
	Must a director / secretary be resident?	No.
10.	Is Annual General Meeting Required?	Yes. Must be held in Uruguay, not later than four months after end of fiscal year.
11.	Annual return:	Yes. Financial statements must be presented to tax authority.
	Must financial statements be prepared and/or audited?	No. All corporations must complete a tax filing by reporting financial statements in a format prescribed by tax authorities.
12.	Is disclosure of profits required by filing balance sheets with annual returns?	Yes.
13.	Are there any exchange	No.

	controls or other financial restraints imposed upon a company?	
14.	Is redomiciliation into the jurisdiction allowed?	Yes.
15.	Is redomiciliation out of your country provided for?	No. Usual procedure is to nominate an already existing foreign company as a shareholder and then liquidate the Uruguayan company, transferring all assets to the shareholder.
16.	Language of incorporation:	Spanish.
17.	Confidentiality:	Legislation imposes strict duty on banks to keep details of clients and their transactions confidential. Professionals adhere to international client confidentiality principles.
18.	Are bearer shares allowed?	No.
19.	ADVANTAGES	
	Not affected by EU savings directive. Not a member of the OECD.	
20.	DISADVANTAGES	
	Slow and cumbersome incorporation procedures and changes to a company's constitution. Spanish documentation and civil law code.	

## 7.20 Further Information

The previous pages contain details of the corporate structures available in a variety of jurisdictions. These details were correct at the time this brochure went to print but may have subsequently changed. Utlandsjuristen also offers a wide range of further products and services. More recent information can be found in our comprehensive information sheets, which also include details of applicable fees. The information sheets listed below can be obtained from our website: [www.ujoffshore.com](http://www.ujoffshore.com) or by calling our office in Gibraltar.

- **Anguilla** – International Business Companies
- **The Bahamas** – International Business Companies
- **The Bahamas** – Hybrid Companies
- **Belize** – International Business Companies and Ship Registration
- **Bermuda** – Exempted Companies
- **The British Virgin Islands** – International Business Companies
- **Canada** – Non-Resident Companies
- **Cayman Islands** – Exempted Companies
- **Cyprus** – International Companies
- **Delaware, USA** – Corporations and Limited Liability Companies
- **Denmark** – Holding Companies
- **Dubai, United Arab Emirates** – Registration and offshore companies
- **Gibraltar** – Companies and Hybrids
- **Guernsey** – Exempt Companies
- **Hong Kong** – Companies and Part XI Registrations
- **Isle of Man** – Exempt Companies
- **Jersey** – Exempt Companies
- **Labuan** – Offshore Companies
- **Liberia** – Companies
- **Liechtenstein** – Family Foundations
- **Luxembourg** – Holdings Companies and SOPARFIs
- **Malta** – Residency and International Trading/Holding Companies

- **Mauritius** – GBC 1 and GBC 2 Companies
- **The Netherlands/Netherlands Antilles** – Tax Planning and Companies
- **Nevis** – International Companies
- **Niue** – International Business Companies
- **Panama** – Offshore Companies and Foundations
- **Portugal** – Property Purchase
- **Russia** – Companies
- **St Lucia** – International Business Companies and Banks
- **Samoa** – International Companies
- **Seychelles** – International Business Companies
- **Singapore** – Companies
- **South Africa** – Companies
- **Spain** – Property Purchase and ETV Holding Companies
- **Switzerland** – Companies and Branches
- **Turks & Caicos Islands** – Exempt Companies and Exempt Hybrid Companies
- **United Kingdom** – Property Purchase in the UK
- **United Kingdom** – Tax Planning and Companies using LLPs
- **Uruguay** – SAFIs, SAZFs and SAs
- **Vanuatu** – International Companies

## 8. Trusts and Trustee Services

### 8.1 Introduction

Although many people prefer not to think about their death, failure to plan in advance can mean that we leave behind a mess that has to be sorted out by our nearest and dearest, often at great expense and inconvenience, at a time when they are emotionally vulnerable.

Many people seek to order their affairs by making a will. Under this arrangement the executors named in the will apply for a grant of probate, take possession of the assets of the deceased and then distribute those assets according to the terms of the will. Such arrangements are perfectly in order but result in high administration costs (often around 4% of the total value of the estate), long time delays (even a simple estate would normally take at least one year to be wound up) and, very often, a large tax bill.

The only real alternative to a will is for an individual to set up a trust during their lifetime. This, with careful planning, can eradicate delays, administration costs and tax liabilities as well as giving a large number of additional benefits. For these reasons the use of trusts is increasing dramatically.

The purpose of this section is to provide an explanation of how trusts can be used to advantage and to dispel some of the most common misconceptions about them.

#### **Trust Concept**

A trust is an arrangement whereby property is transferred from one person (the Settlor) to another person or corporate body (the Trustee) to hold the property for the benefit of a specified list or class of persons (the Beneficiaries). A trust can be created solely by verbal agreement but it is normal for a written document (the Trust Deed) to be prepared which evidences the creation of the trust, sets out the terms and conditions upon which the trust assets are held by the Trustees, and outlines the rights of the Beneficiaries. In essence, a

trust is not dissimilar to a will except that assets are transferred to the Trustees during the lifetime of the owner or Settlor, rather than to executors upon death.

Those unfamiliar with the trust concept usually express concern at the idea of transferring ownership of their property to a Trustee. This concern can be alleviated if the trust concept and the distinction between legal and beneficial ownership is properly understood, and provided that a reliable trust law that can be enforced in a reputable jurisdiction governs the trust.

## **Legal and Beneficial Ownership**

The practical advantages of a trust are derived from the fact that a distinction is drawn between the formal or legal owner of property and the person who has the use or benefit of the property – the Beneficial Owner. For formal legal purposes the Trustee is recognised as the owner whereas the persons who have the use or benefit of the property are the Beneficiaries. It is possible for the Settlor to retain an interest in the trust and even to be an actual or potential beneficiary, but this can have estate duty and tax disadvantages. It is vital that the Trustee remains independent and exercises proper control over the trust property. A trust may be declared invalid if the Settlor continues to exercise control over the trust assets.

## **Accountability of Trustees**

Trust law imposes strict obligations and rules on Trustees. There is a basic rule that a Trustee may not derive any advantage directly or indirectly from a trust unless expressly permitted by the trust – for example, where he is a professional Trustee and the trust provides specifically for a right to make reasonable charges for services. However, full disclosure of the basis and amount of charges is required. A professional Trustee who derives some indirect commercial advantage that is not fully disclosed and approved will be acting in breach of trust.

## **Duty of Trustee to Obey Trust Document**

The most important rule relating to the duties of a Trustee is that requiring him to obey the directions contained in the Trust Deed regarding both the interests of the beneficiaries (e.g. who is entitled to what) and the administration of the trust (managing the trust property). Trustees are also subject to very strict rules governing the way in which their powers and discretion may be exercised.

## **Fiduciary Relationship of Trustee**

The courts regard a trust as creating a special relationship that places serious and onerous obligations on the Trustee. A Trustee is therefore subject to the following rules:

### **a. No Private Advantage**

A Trustee is not permitted to use or deal with trust property for private direct or indirect advantage. If necessary the court will hold him personally liable to account for any profits made in breach of this obligation.

### **b. Best Interests of Beneficiaries**

Trustees must exercise all their powers in the best interests of the Beneficiaries of the trust, and disregard the interests of others – including the Settlor.

### **c. Act Prudently**

Whether or not a Trustee is remunerated, he must act prudently in the management of trust property and will be liable for breach of trust if – by failing to exercise proper care – the trust fund suffers loss. In the case of a professional Trustee, the standard of care that the law imposes is higher. Professional Trustees hold themselves out as having special expertise and the courts will expect them to exercise a high standard of competence. Failure to exercise the requisite level of care will constitute a breach of trust for which the

Trustees will be liable to compensate the beneficiaries. This duty can extend to supervising the activities of a company in which the Trustees hold a controlling shareholding.

## 8.2 Advantages of a Trust

Trusts are an important tax-planning tool but they also have other uses that are of equal, if not greater, importance. A properly drafted and managed trust can confer advantages under any or all of the following heads:

### **Asset Protection**

Trusts can be one of the most effective ways of protecting assets. In simple terms, assets transferred to a trust no longer form part of the Settlor's property so the trust assets cannot be seized if a Settlor gets into financial difficulties because of bankruptcy, divorce, a court award made as a result of, for example, a professional negligence claim or otherwise. This premise is legally correct but is an over-simplification of the law. Under certain circumstances, the transfer into trust may be set aside and a court may order the trust assets to be transferred back to the Settlor.

The rules of many onshore jurisdictions make this possible if a creditor of the Settlor, who cannot otherwise get paid, can show that the Settlor transferred assets into trust with the intention of avoiding a current or future liability or if the liability owed to the creditor arose within a certain statutory period after the transfer into trust. For these reasons it has not been possible to be certain that assets transferred into trust are completely safe from creditor attack.

To overcome this problem many offshore jurisdictions amended their trust or bankruptcy laws to create what is now commonly referred to as the "Asset Protection Trust" (ATP). This legislation gives protection to assets transferred into the trust structure from all forms

of creditor attack, provided the Settlor can show that he retained assets in his own name which had a value greater than or equal to his known current or future liabilities.

In short, the Settlor must be solvent at the time of the transfer into trust and must not become insolvent as a result of that transfer. By choosing an offshore jurisdiction which has enacted ATP legislation it is possible to gain a degree of additional asset protection over and above that inherent in a normal trust structure.

## **Tax Planning**

Assets transferred into trust are, in simple terms, no longer considered as belonging to the Settlor. As a result, the income and capital gains generated by those assets are taxed according to the rules governing the legal owner – the Trustee. Inheritance tax would therefore be eliminated because the Trustee would continue in existence despite the death of the Settlor. Anti-avoidance legislation in the home country of the Settlor, or in the location of the trust assets, may seek to counteract this outcome but a correctly structured and administered trust should produce substantial savings in income tax, capital gains tax and inheritance tax/estate duty.

## **Avoiding the Expense and Delays of Probate**

The death of the head of the family will usually result in major disruption of the family estate, whether or not there is a will. In most common law jurisdictions the estate must go through the probate procedure with much consequential delay, expense, publicity and upheaval. Probate can be avoided by establishing a trust because the death of the Settlor will not affect the trust property, which will continue to be held and managed in confidence by the Trustee.

## **Confidentiality**

Proving a will is a public procedure. The tax authorities will need to receive a complete list of all property owned by the deceased in order to assess the amount of estate duty payable before the property can be transferred to the executors for distribution to the legal

heirs according to the will. This procedure is entirely unsuitable for those who wish to keep details of their assets confidential. The only other legal form of transfer is via a trust, which would generally save estate duty and keep the trust assets confidential.

### **Avoiding Forced Heirship**

In continental European countries and other civil law jurisdictions, as well as in countries of Islamic tradition, there will often be “forced heirship” provisions to consider. In other words, the deceased may not be permitted to leave his property to whomever he wishes on his death. Typically forced heirship rules provide that one-third of an estate must be left to the children, one-third to the spouse, and only the remaining third is free to be distributed according to the deceased’s own wishes. But forced heirship provisions can be circumvented by transferring the assets of an estate into a trust before death, thereby enabling the Settlor to prescribe a wider or different distribution of the estate.

### **Estate Planning**

Many people do not want their assets to pass outright to their heirs, whether chosen by them or as prescribed by law, and prefer to make more complex arrangements. These might involve providing a source of income, but not capital, for a widow for life, making provision for the education of children but not letting them have access to capital until later life, or providing a fund to protect members of the family in the event of sudden illness or other calamity. A trust is probably the most satisfactory and flexible way of making arrangements of this kind.

### **Protecting the Weak**

A trust provides a vehicle by which a person can provide for those who may be unable to manage their own affairs such as infant children, the aged, the disabled or persons suffering from illness.

## **Preserving Family Assets**

Preserving the family assets, or increasing them, is often a motive for setting up a trust. An individual may wish to ensure that wealth accumulated over a lifetime is not divided up amongst the heirs but is retained as one fund to accumulate further with provision for payments to members of the family as the need arises while preserving some assets for later generations. This can be achieved through a trust.

## **Continuing a Family Business**

An entrepreneur who has built up a business will often be concerned to ensure that it continues after their death. If the shares in the company are transferred to Trustees prior to death, a trust can be used to prevent the unnecessary liquidation of a family company and to ensure that the individual's wishes are observed. These might include provision for payments to be made to members of the family from dividend income, with the Trustees retaining the shares and maintaining the company except in special circumstances justifying sale of control or liquidation. This may be particularly advantageous where family members have little business experience of their own or where they are unlikely to agree on the correct way to manage the business.

## **Gaining Flexibility**

The best-laid plans can rapidly become obsolete but a Discretionary Trust can provide a system of management of property that is capable of adapting as circumstances demand. No beneficiary has any fixed or absolute interest in the trust assets under a Discretionary Trust. Instead, the Settlor can simply nominate a class of beneficiaries and the trustee is given wide discretionary powers in terms of whether and to whom he distributes trust assets. Beneficiaries only have a contingent interest and avoid any tax liability until such time as a distribution is made to them.

## 8.3 Which Jurisdiction?

There are many jurisdictions, both onshore and offshore, in which it is possible to set up a trust. When choosing the best jurisdiction it is important that it offers:

- a strong tradition of enforcing trusts;
- an English Common Law system;
- an established reputation for trust business;
- modern legislation including contemporary trust concepts – particularly APTs;
- low or no taxation for trusts.

In the light of these requirements, the onshore jurisdictions such as the UK, USA and Australia are unsuitable because of high tax. Some jurisdictions are not recommended because of political uncertainty or because they have only recently started to attract trust business and their courts and professionals have limited trust experience. Other jurisdictions, whilst being noted for their expertise, have not kept pace with the modern trends in legislation that bring additional benefits and additional protection to trust assets. Some of the more traditional trust jurisdictions, such as Jersey and Guernsey, fall into this category.

There is a very wide choice of jurisdiction but only a small number are able to offer all the important elements. Although there are other jurisdictions which offer similar advantages, we believe that Gibraltar, Turks & Caicos Islands and the Isle of Man are amongst the best available.

Gibraltar and the Turks & Caicos Islands, in particular, have initiated strong asset protection legislation and have a requirement that a Professional Trustee is licensed. Trust companies are therefore required to prove to the licensing authority that they have the necessary probity, experience, financial resources, management methods and indemnity insurance to ensure that they operate in a totally proper and professional manner. Sovereign Trust (Gibraltar) Limited and Sovereign Trust (TCI) Limited are fully licensed to

act as Professional Trustees in their respective jurisdictions. The Isle of Man, where we also have an operating subsidiary, is soon to introduce similar licensing requirements.

## **8.4 Disadvantages and Solutions**

### **Irrevocability**

It is incorrect to assume that trusts cannot be revoked. Trusts can be made revocable but this usually has tax, estate duty, asset protection and stamp duty consequences. Revocability is a matter to be discussed when the terms of the trust are considered.

### **Loss of Control of Property**

Many potential Settlers are reluctant to transfer property to Trustees because they fear loss of control over that property. There are many who like the idea of a trust but wish to continue to exercise effective control over the trust assets after the transfer. Careful planning together with an understanding of the fundamental legal requirements of a trust is required if the trust is to remain valid. If a Settlor retains too much control over the assets there is a risk that the trust will not be effective and the Settlor will continue to be regarded by the law as the owner. If this happens all the advantages of having the assets held in trust may be lost. In particular, a court may force a Settlor to exercise any control he retains in a particular manner thereby negating any asset protection advantage that would otherwise have existed. Despite this there are devices that may be used to give comfort to a Settlor.

### **Memorandum of Wishes**

When setting up a discretionary trust it is common for the Settlor to indicate to the Trustees how the Settlor would have dealt with those assets if he had retained ownership. The Trustees will then make a comprehensive note of those wishes in a written memorandum,

which they would refer to before dealing with the trust property. The wishes of the Settlor will not be binding on the Trustees but, in practice, most reputable Trustees would be reluctant to deal with the trust property in any way other than that suggested by the Settlor except, for example, where a change in circumstance or other matters suggests it is clearly disadvantageous to the Beneficiaries to act in that manner.

## **Protector**

It is possible to appoint a Protector to exercise some degree of control over the trust property. In our view, it is unwise for a Protector to be given anything other than negative powers – that is, the Protector's powers should be limited to vetoing the decisions or actions of the Trustees rather than having power to force the Trustees to act in any particular way. If the latter, a Protector could be found to be a quasi-Trustee and negative consequences might ensue, especially was the protector to be resident in a high tax country.

It is usual for a trusted friend, family relative or professional adviser of the Settlor to be appointed as Protector but it is also becoming increasingly common to use the services of a professional trust company. For this reason Utlandsjuristen is able to serve as a professional Protector where we are not retained to act as Trustees.

## **Two-Tier Company and Trust Structure**

Greater flexibility can sometimes be achieved by having the underlying assets owned by a company whose shares are then owned by a suitable trust, rather than the underlying assets being owned directly by the trust. The Settlor, or an appointee of the Settlor, may act as the director of the company and may therefore exercise day-to-day control over the underlying assets with minimal interference or need to refer to the Trustees. This two-tier structure can be used to good effect in certain circumstances but may have tax and other disadvantages where the director of the company is resident in a high tax country.

## **Joint Trustees**

There is no reason why a trust cannot be structured so that there are joint Trustees, with the agreement of both being required to take any action. The second Trustee may be the Settlor himself or a company controlled by the Settlor. Again, there may be negative tax or other consequences resulting from such a structure if the Settlor is resident in other than a low tax jurisdiction. Alternatively, a check and balance may be obtained by having two different professional trust corporations acting as joint Trustees. This can be cumbersome and expensive but may be suitable for certain trusts.

## **Costs**

It is often assumed that the costs of running a trust are prohibitive and it is true that many of the major banks and other financial institutions charge substantial fees for setting up a trust and then also demand a percentage of the trust assets in annual administration fees. But the fees charged by smaller, independent trust companies are generally more reasonable and can make trusts affordable for even modest estates. Independent trust companies offer a more personalised service their independence enables them to choose the best investments for the trust without coming under pressure to place trust money with their own in-house investment advisers.

## 9. Additional Utlandsjuristen / Sovereign Group Services

Alongside our core business, and as part of The Sovereign Group, we have developed a wide range of supporting services embracing asset management, corporate finance and fund raising, specialist tax advice, ship and yacht registration, credit card provision, as well as trademark and intellectual property registration and protection.

- UJ Marine
- China Services
- VAT Registration in the EU - Specialist Tax Advice
- US Nationals - Specialist Tax Advice
- Trademark and IP Services
- Sovereign Asset Management Limited (SAM)
- Credit Card Provision
- Sovereign Law
- Sovereign Group Partners LLP (SGP)

## 9.1 UJ Marine

With the expertise gained from 20 years of experience in the fields of yacht registration and offshore company management, UJ Marine can provide a fully professional and personal service to yacht owners in the following areas:

- Global yacht registration
- Assistance with brokered purchase and sale
- Marine Insurance
- Marine Finance
- Radio Licensing
- Accounting
- Corporate structures to hold vessels
- Tax efficient management of private and chartered vessels
- Tax and VAT advice and planning

So whatever your nautical requirement, let UJ Marine take the helm.

UJ offers yacht registration on a worldwide basis, but the British Red Ensign is our flag of choice. The Red Ensign provides international recognition, prestige and protection to each vessel that flies it. British-registered yachts may seek assistance from any British embassy or consulate and all the important information about a yacht, including mortgages, debts or liens, is recorded at its Port of Registry.

But if you want to fly the Red Ensign it is important to make an educated choice as to which of the many British Ports of Registry around the world will meet your individual needs. Each register is self-contained and has different regulations in place, offering its own advantages and in some cases, disadvantages.

For full registration, the proposed name for the yacht must be cleared with the Port of Registry.

The yacht must have a Tonnage Measurement Survey carried out by a recognised classification society and either an original Builders Certificate for a new yacht or a

notarised Bill of Sale for a pre-owned yacht. UJ Marine, as Registered Agents, would arrange all these matters for you to ensure that the correct procedures are followed and the right forms are submitted for registry purposes.

Our comprehensive marine service would include registration of a change of ownership of a yacht, a change of name of a yacht or a transfer of a yacht to another British Port of Registry. We will also submit the necessary documentation for the Registry to issue a "Provisional Registration" for the yacht that is valid for three months. This will allow the yacht to move freely while the full registration is being completed.

### **Corporate Ownership**

Registering a yacht in the name of a company is an increasingly popular and inexpensive option that can deliver a number of significant advantages:

- Confidentiality of ownership - UJ can advise on the most suitable jurisdictions to incorporate, taking into account your domicile and residence, as well as provide directors and shareholders to ensure confidentiality;
- Inheritance - adopting a corporate structure for ownership may enable you to avoid inheritance taxes;
- Transfer taxes - under a corporate structure, selling a vessel can be effected simply by transferring your shareholding to the new owner, often thereby avoiding home country transfer taxes or licensing issues;
- Asset protection - transferring the assets of a company to a discretionary trust can provide increased asset protection, as well as continuity in terms of the settlor's wishes;
- Limited liability - if a vessel is registered in the name of a company whose sole asset is the boat, this will limit any liability from damage to another vessel or personal injury to a third party.

## 9.2 China Services

The People's Republic of China has become one of world's most exciting emerging markets. With its massive population of over one billion people, economic growth rates in excess of 8% sustained for the past 15 years and low labour costs, more and more companies, both large and small, are looking to establish and develop business in China.

These operations are generally looking to operate in two principle areas:

- Sourcing or production of goods for export. China's low-cost, and increasingly sophisticated, workforce, combined with excellent transport services and a successful track record have resulted in "Made in China" label becoming ubiquitous on a diverse array of goods;
- Provision of raw materials, technology, sophisticated goods or professional services to the rapidly growing Chinese market. Car ownership rates are growing at nearly 50% per annum, Internet usage is second only to the USA and the urban powerhouses of Shanghai, Beijing, Guangzhou and Shenzhen are generating huge demand for all levels of consumer goods.

### **Establishing a presence in China**

The complexities of entering the Chinese market can at first seem bewildering. The usual concerns such as business viability and costs structures are compounded by the need to choose from an unfamiliar menu of entities - such as Representative Offices, Wholly Foreign Owned Enterprises and Joint Ventures - each with its own set of operating restrictions and tax treatments. Furthermore, within China, there are literally hundreds of special economic zones, offering special rates and differing tax concessions, from state to state, city to city and, even at times, from district to district.

China divides foreign goods and services into three categories - encouraged, accepted and prohibited - all of which can require a distinct approach. China's legal and accounting systems are also run on very different lines to the West and reliable information is not

always easy to find. On top of this, China is rapidly overhauling its legal, financial, accounting and tax systems to meet international and internal reform programmes.

All in all, the potential investor could be facing a daunting task. In order to assist our clients to progress safely and surely through this maze, UJ has set up a team of highly experienced China experts to assist in all stages of China entry. Our integrated approach ensures that clients make the right choices at every stage from identifying the best location, operating structure and, if required, joint venture partner, to recruitment of key local and expatriate staff.

### 9.3 VAT Registration in the EU – Specialist Tax Advice

Trading structures operating within the European Union require VAT registration in order to account for their purchases and sales and to avoid having to pay VAT that they cannot then recover. UJ can arrange VAT registration that will enable clients to operate in a fully compliant manner throughout the EU.

Since 1 January 1993, goods and services can no longer be sold between EU Member States without liability to account for or collect VAT. Offshore companies have long been used to minimise tax on international transactions but, from this date, offshore companies trading within the EU had to register for VAT if transactions between Member States were to be zero-rated for VAT.

Where to register for VAT is a key decision. An offshore company can be registered for VAT anywhere within the EU, irrespective of where the actual trading takes place, but it is important that the tax benefits of the offshore company are maintained. VAT registration in certain Member States could imply residence and create a future tax liability there.

UJ advises that offshore companies register in the EU by setting up a UK limited company to act as their agent for VAT purposes. The UK limited company could either be a subsidiary of the overseas company or a company with common ownership. UJ recommends that the UK company is structured with third party non-resident directors and that UJ provides corporate nominee shareholders.

It is important that the offshore company does not trade in the UK in order to protect its position as not being liable to UK corporation tax and, ideally, the UK company should not provide any services other than a VAT service.

The UK company must register the offshore company for VAT in the UK and a VAT number is usually issued two weeks after submission of an application form and supporting documents.

We can recommend UK-based accountants who are VAT experts to handle the registration and to provide the principal place of business in the UK. They would also attend to the filing of the quarterly returns and preparation of EU Sales Lists to the UK VAT authorities.

In addition to the one-off VAT registration fee of £300, there will be an annual charge for the provision of quarterly returns and preparation and audit of accounts by the UK accountants who handle the registration. There will also be fees for the incorporation and annual service costs for the UK company.

## 9.4 US Nationals – Specialist Tax Advice

The United States of America operates one of the most rigorous tax systems in the world. If you are a US citizen or resident alien living or travelling outside the United States, you are generally required to file income tax returns, estate tax returns, and gift tax returns and pay estimated tax in the same way as those residing in the United States.

You may qualify to exclude from income up to US\$80,000 of your foreign earnings, but both worldwide income and capital gains are subject to US tax on a progressive scale rising to a rate of 35%. A resident alien is an individual that is neither a citizen nor a national of the US, but who meets either the green card test or the substantial presence test for the calendar year.

As a result, US citizens are not generally able to take advantage of the favourable tax regimes of their host country when working abroad. Stringent anti-avoidance legislation has also reached such a level of sophistication that many of the traditional tax planning techniques that would be effective in reducing tax for other nationals, are ineffective for US nationals. There are, however, still some structures available that can be effective in deferring and/or avoiding US tax. The best of these is the "Rabbi Trust".

Under a "Rabbi Trust" - so named because one of the first such arrangements approved by the IRS was developed by a synagogue for its Rabbi - the Employer acts as the settlor of a trust and pays into that trust a proportion of the agreed compensation which would normally be payable directly to the Employee. Monies passed directly into the trust are not taxable in the hands of the Employee while they are held in trust and, provided that the trust is correctly structured and set up in a suitable tax haven jurisdiction, monies held by the trustees can also be reinvested and rolled up free of tax.

For a total remuneration package worth US\$150,000 per annum, for example, if the Employee were not US-resident then he would benefit from the US\$80,000 exclusion, leaving only US\$70,000 per annum to be subject to US tax. If, instead of paying the whole package directly to the Employee, the Employer paid the Employee US\$80,000 in salary and benefits and placed the remaining US\$70,000 into a trust, then that sum could be held by the trustees, invested on behalf of the Employee and rolled-up completely free of tax for

as long as it remained within the trust structure. If part or all of the trust fund was removed from the trust structure and paid to the Employee then, at that time, it would become taxable in the hands of the Employee.

## 9.5 Trademark and IP Services

The intellectual property associated with a business name or system can be one of its most valuable assets, but only if it is properly protected. Any business that wishes to establish a national or international identity should take steps to protect the use of its name, logo or other intellectual property. This is preferably done at the outset when it can be done more quickly, easily and cheaply.

For instance, many people do not realise that simply registering a company or Internet domain name gives no monopoly on that name and does not prevent others from registering similar names in the same jurisdiction and identical names in other jurisdictions.

The only effective way to guard against this happening is to register a trademark or service mark in each jurisdiction in which one wishes to be protected or intends to carry on business. Some short cuts are available - registering a trademark in the European Union provides cover in all EU member countries, while registering under the Madrid Protocol covers a number of other countries.

Generally the starting point is to register a trademark within one country that is a party to an international convention. This then gives the applicant a six-month window in which to file in other countries and gain priority, e.g. the same verification date as the date of filing in the first country. This allows other registrations to progress when time and available funds allow.

Given the importance of trademarks, and intellectual property generally, to modern businesses, Sovereign has established an intellectual property division that offers the following services:

- Registration of trademarks anywhere in the world and advice on a suitable trademark programme
- Monitoring service to advise when others attempt to register similar marks

- Advice in relation to all aspects of intellectual property registration including designs, patents and copyright
- Advice and pro-active assistance to protect intellectual property rights from infringement and other abuse
- Patent and petty patent registration
- Domain name registration and escrow services

## 9.6 Sovereign Asset Management Limited (SAM)

SAM offers all Sovereign clients, regardless of the size of their investment, a level of asset management service usually only available from private banks to very high net worth individuals. SAM is located in Gibraltar and is licensed by the Gibraltar Financial Services Commission, which is a competent authority, recognised by the European Union. SAM gives clients access to the full range of financial products including, but not limited to:

- International equities and fixed interest instruments, such as corporate or treasury bonds.
- Fixed term deposits.
- Access to the full range of mutual funds. These funds include single and multi-manager funds.
- Personalised Insurance Bonds that provide clients with the opportunity to structure their portfolios through a single premium bond issued by established insurance providers.

All these products and services can be offered on either a discretionary managed basis or non-discretionary, execution-only basis.

As a consequence of having large sums of money under management, SAM is able to negotiate extremely attractive deals with major financial institutions such as Pictet Bank, Credit Suisse, Bank Von Ernst and Irish Life International and pass on the benefit of these to clients.

SAM's key strategy when helping to structure portfolios is to ensure that there is sufficient diversity in terms of the investment across different countries, sectors, currencies, credit risks and financial instruments.

But SAM can structure a portfolio in accordance with its client's risk appetite and, of course, portfolios will be structured in the most tax efficient way possible.

In addition, SAM can assist in the formation of investment funds for institutional investors. These funds can be established in territories, such as the Bahamas, quickly and cost-effectively. Once established, SAM can arrange the provision of ancillary services such as custodian, administration and auditing functions.

## 9.7 Credit Card Provision

It is generally quite difficult to obtain a credit or debit card on an offshore company account. Some banks are willing to provide cards but only if a deposit is lodged with the bank equal to up to three times the monthly available balance.

For this reason UJ now offers the Sovereign MasterCard. A deposit equal to 125% of the monthly credit limit secures the credit card. The credit card is a convenient way to pay business expenses incurred in relation to an offshore company. All transactions are processed offshore, thereby assuring maximum confidentiality.

## 9.8 Sovereign Law

Sovereign Law is an international association of law firms and professionals who provide legal services. Its principal objective is to create a one-stop shop for the provision of legal, taxation, accountancy and other business services.

Created as an association of small to medium-sized firms worldwide, Sovereign Law members work together on a unique referral basis to ensure that the client receives all due care and attention for any particular matter. Members work through the [sovereignlaw.com](http://sovereignlaw.com) website using, where appropriate, outside associates including accountants, lawyers, banks and other specialists.

Sovereign Law members are able to provide first class legal and business services covering the whole spectrum of today's complex business environment. As a guide, members have a particular specialty in the stated practice areas:

- Corporate and Commercial
- International Trade
- Tax and Financial Planning
- Litigation
- Intellectual Property and IT
- Shipping
- Private Equity
- Mergers and Acquisitions

## 9.9 Sovereign Group Partners LLP (SGP)

Sovereign Group Partners LLP was formed in 2001 by former senior investment bankers who teamed up with Sovereign to provide corporate finance and fund raising expertise to a range of private companies that fall below the radar screen of the investment banks.

The primary aim of the business is to arrange equity and debt financing for private companies, typically in the range of US\$2-30 million. This includes seed, start-up, other early stage and expansion capital financing, prior to an Initial Public Offering (IPO) and/or a trade sale.

SGP can demonstrate its commitment to clients by operating on a "success fee" basis for fund raising but, if preferred, will provide corporate advice and other consultancy services on a straight time-fee basis. SGP can also accept a mix of cash and equity for its services.

## 10. Contact Us



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