

COMPANY FORMATION

There are myriad factors to consider when engaging in the process of a company formation. When setting up a public or private limited liability company, for instance, the submission of important documents is required, for example the Memorandum and Articles of Association, which contain fundamentals such as company name, objects and powers and its original share capital. In addition to this, the company will need to be listed in the relevant company register, in order to be defined as a legal entity.

The timeframe for a company formation can vary widely, ranging from a matter of days to over a month. For example, when incorporating a company in Luxembourg, the entire process usually takes around one week; whereas in the Dominican Republic, it takes approximately 45 – 60 days due to the mandatory completion of various additional formalities. These include arranging for the publication of the company name in the National Office of Industrial Property – a process that can take ten days to complete.

A key prerequisite for people wishing to establish their business or private interests in an offshore jurisdiction is to select a location that provides political and economic stability, to ensure that business can be conducted with certainty, confidence and corporate security. The most essential criteria are that the legislation is modern, flexible and well-proven with respect to issues such as low share capital requirement, minimal reporting obligations, the possibility to hold members' and directors' meetings anywhere in the world, as well as the opportunity to appoint nominee shareholders and directors.

Jurisdictions around the world can be categorised as either treaty jurisdictions or non-treaty jurisdictions. Anyone wishing to reap the benefits from a double tax treaty must establish a company situated in a treaty jurisdiction. This is essential for minimum withholding tax on dividend payments and royalties from contracting states. Treaty jurisdictions also convey a non-offshore image, which is more appealing for some. A non-treaty jurisdiction is mainly used in the absence of corporate taxes on the company's profits, and usually only requires companies to pay a fixed annual licence fee. It is important to assess the taxation implications for the business, and to decide whether a treaty jurisdiction is required.

Tax considerations

Today's increasingly complex tax and accounting regimes, and the growing trend towards globalisation, means that obtaining the right strategic tax advice has never been more important. The key objective in effective corporate tax planning is to identify the main factors in an organisation's structure that dictate the opportunities for tax efficiencies. Once identified, corporate tax and accountancy professionals can devise and implement tailored strategies for the business or a particular transaction.

From a corporate tax perspective, the success of any transaction rests on the close working relationships that are established between the company and their corporate tax adviser. Nurturing these professional relationships ensures that tax issues are raised and subsequently solved by specialists at the earliest stages of any transaction – when it matters most in structuring the deal. In addition to this, it is crucial to ensure that overall structure after completion of the deal ensures tax efficiency moving forward.

When asked about the standard timescales for incorporating a new company in Malta, Dr. de Gabriele noted that this will vary, depending on the complexity of the company to be formed. "However," he said, "once the statute of the company is agreed upon between the subscribers, the time required for registration may be as little as 48 hours from the moment of filing all necessary documentation."

He added: "The time taken to agree upon the statute constituting the company, however, differs on a case-by-case basis, and normally depends on the amount of negotiation involved at the pre-registration stage – and whether the various subscribers to the company have diverging interests."

Companies registered in Malta are governed by the Companies Act – Chap. 386 of the Laws of Malta – which is heavily based on the UK system, thus forming part of a network of laws familiar to many. Historically, Malta has its strongest ties with the UK and Italy; meanwhile, business is done with all major European countries. Malta's own reputation was strongly enhanced following Malta's accession into the EU in 2004 and Malta also has access to the North African countries, with Libya and Tunisia being the main ports of call due to geographical proximity.

Dr. de Gabriele concluded: "Prior to the launch of various government driven schemes for Foreign Direct Investment, Malta's main thrust was always in the manufacturing and tourism sector. Nowadays Malta has strongly increased its reputation in sectors as vast and complex as financial services, biotechnology, internet gaming, telecommunications and ICT. The country also consistently updates its regulatory infrastructure to take into account the ever-changing international markets. Meanwhile, it implements new legislation sourced from the EU and other international bodies – providing even more freedom and choice to prospective investors."



CAMILLERI PREZIOSI
ADVOCATES

Malta

Dr. Louis de Gabriele - Partner
Camilleri Preziosi Advocates
+356 2123 8989
louis.degabriele@camilleripreziosi.com
www.camilleripreziosi.com

Based in Malta, Camilleri Preziosi Advocates combines innovation with technical excellence in order to offer clients a quality legal service. The firm's approach is to understand key business drivers, and to provide an integrated, solution-driven service that adds real value to clients.

Dr. Louis de Gabriele, partner at the firm, noted that the firm's main goal is to understand the key risk and business strategies behind the client's motivation to form a new company. He said: "The key factors that one must always keep in mind are whether the formation of a new company is feasible within the client's intended organisational set-up, as well as whether the formation of a new company will truly add value thereto."

With regard to the main steps involved in the company formation process itself, Dr. de Gabriele said that initially, the subscribers to the new company must agree upon the state of the company, and draw up the company's memorandum and articles of association. These documents are then forwarded to the Registrar of Companies for registration. At this point, evidence must be produced showing that the paid up share capital of the company has been deposited at the bank.

Upon filing of the necessary documents and payment of the fee, the Registrar of Companies will review all information before issuing a certificate of registration showing that the company has been officially registered.



Austria

Erich Baier, MBA, LL.M. (Int'l Tax Law) TEP, Certified Tax Advisor
Bilanz-Data Wirtschaftstreuhand GmbH
(+43 1) 516 12 0
baier@austrian-taxes.com
www.austrian-taxes.com



Bilanz-Data Wirtschaftstreuhand GmbH, a Viennese based tax law and accounting firm, was established by Erich Baier, MBA, LL.M. TEP, Certified Tax Advisor, in 1986 and is celebrating its 25th anniversary tax this year. During these years the firm has gained significant reputation among both domestic and international clients for its expertise in international tax law and for its policy to provide clients with a one-stop shop.

According to Mr. Baier, the firm supports its domestic and international clients in establishing and managing companies by providing all tax-related advice that is required before starting a company.

He added: "Even then – after establishing the company – our clients know that we will accompany them and also support them with our comprehensive range of corporate services. These include financial accounting, payroll accounting, setting up annual accounts both for trade law and tax law purpose and preparing and filing tax returns."

He went on to explain that at the very beginning of the business it is essential to know whether to use a corporate entity for running the business or if, indeed, a limited or unlimited partnership may offer more advantages. Meanwhile, the most popular form of running a business both for domestic and international purposes is the GmbH – a company with limited liability.

An Austrian GmbH can be established by a single shareholder, regardless of whether it is a resident or non-resident individual or a corporate entity, or a trust or a foundation or any other legal entity. Such a GmbH comes into existence with the help of a notarial deed, and this deed includes of course the articles of association. These articles of association are drafted taking into consideration the bespoke wishes of the client, whilst also minimising the tax burden.

In Austria, the normal timescale for completing a company formation process is three to four weeks. This process begins with the drafting of the articles of association and continues with signing the notarial deed. The next, perhaps most important, step is ensuring bank compliance. Mr. Baier noted: "During our many years' experience we have gained significant expertise in preparing the necessary documents for bank compliance, as well as providing detailed guidelines to clients as to which documents need to be submitted to the bank in the first place."

After the bank has finished the compliance procedure, it then provides a bank account where the share capital of the Austrian GmbH can be paid

in. After having received the confirmation from the bank that the share capital has been paid in, the notary then submits both the notarial deed and this bank declaration to the competent court together with an application to register the company.

Mr. Baier continued: "The statutory minimum share capital of an Austrian GmbH is EUR 35,000 – of which at least EUR 17,500 has to be paid in when establishing the company. These funds are locked up for a period of approximately two weeks, which is the time the court needs for the registration process; however, these funds can then be used as a working capital for the company. There is no necessity to lock up these funds forever."

Although this process of registration is maybe slightly more complicated than registering a classical offshore company, the Austrian GmbH remains popular because selection of an Austrian GmbH ensures a prime location in the centre of the European Union as well as tax benefits and incentives such as an extensive Austrian tax treaty network. Crucially, Austria has 89 tax treaties with foreign jurisdictions including Bahrain, Barbados, Belize, Hong Kong, Kuwait, Liechtenstein, San Marino, Singapore and the UAE.

"As regards tax benefits," said Mr. Baier, "domestic Austrian tax law foresees that provided the Austrian GmbH holds at least 10% of the shares of a foreign subsidiary for at least one year, any dividends or capital gains resulting from such a shareholding are tax exempt in the hands of the Austrian company – regardless of whether Austria has a tax treaty with that foreign jurisdiction or not.

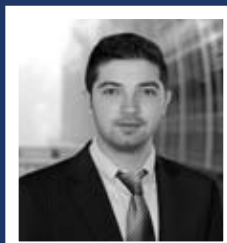
"Further, portfolio dividends – shareholdings of less than 10% – can lead to tax-free dividend income, provided that the tax bracket of the underlying subsidiary is at least 15%. Indeed, a large number of regulations and incentives laid down in the Austrian Income Tax Act and the Austrian Corporate Income Tax Act make an Austrian company a perfect tool for international business."

He concluded: "All in all, Austria serves as a perfect hub to Eastern European countries for investors from Asia or Latin America, and is an ideal starting point for Eastern European and Asian investors into the European market. Being member of the EU, Austria has implemented European Directives into its domestic tax law and is therefore a perfect platform for building a robust group of companies – through using an Austrian GmbH as a parent company."



Cyprus

Vahe Gevorgyan, Director
Tax Services
+357 22 255 335
+357 96 344 969
v.gevorgyan@prospectacy.com



Emil Darbinian, Director, Compliance
and Reporting Services
+357 22 255 335
+357 99 889 825
e.darbinian@prospectacy.com



Prospectacy Limited
Business Consultants
www.prospectacy.com

There are many advantages of forming a company in Cyprus, and year after year foreign investors are attracted to this jurisdiction to establish new business enterprises. The country's history of being an international financial centre with stable legislation and its reputation of having one of the lowest tax rates in the EU (10%) are just two of Cyprus' appealing logistical attributes.

The other factors for potential investors to consider are: the vast network of Double Tax Treaties (DTTs), the country's common law jurisdiction, Cyprus's strong relationship with the majority of the world's banks, the advanced banking and financial infrastructure, the availability of multilingual high calibre professionals in a range of business disciplines, and the low cost of maintenance.

Vahe Gevorgyan, director of Tax Services for Prospectacy Limited Business Consultants, explained some of the fundamental aspects a start-up team should examine before establishing a new enterprise.

"I would like to stress the importance of getting a pre-incorporation consultancy regarding the tax, legal and operational structure so as to ensure maximum tax efficiency. One must also consider the availability of DTTs in place with the jurisdictions that will be involved in the operations of the company and the requirements that must be fulfilled for taking advantage of the provisions of such DTTs. Furthermore one should look at the possible ways of protecting the privacy and confidentiality of beneficial owners, as Cyprus is a common law jurisdiction and offers a variety of such solutions."

Prospectacy Business Consultants is a corporate consultancy providing company formation, professional and business management services. The company's team includes qualified accountants, auditors, lawyers and tax consultants, all of whom are members of some of the world's largest professional bodies. The Firm has set itself apart from its main competitors by structuring Prospectacy for immediacy and impact. The Firm is free from layers of bureaucracy which can often dilute client relationships or unnecessarily increase cost. With Prospectacy clients will be able to work directly with senior-level consultants and not trainees or junior executives.

From the perspective of an entrepreneur or a client looking to avail of formation based legal services the following of a strict timescale is a very important and a very necessary discipline. Prospectacy operates a policy

of "expedite incorporations only," without any additional costs for the clients. As a result of this practice, which is offered in the best interest of the clients, it takes just five to ten business days to incorporate a company. If the order requires a more urgent time-frame, the firm recommends that clients acquire one of its shelf companies, which are available immediately. Usually, what holds up the process of incorporation is the approval of the business name. In such cases, Prospectacy offers clients one of the group's pre-approved names, which can speed up the whole process by three to four days.

Although businesses from any jurisdiction can use a Cyprus company, the highest demand for formations is from ex soviet countries and Eastern and Northern Europe. Due to recent developments, Prospectacy expects to see increasing demand from China, Germany and Italy. According to Emil Darbinian, the real estate and investment industries are the prime sectors where new formations occur.

Emil Darbinian elaborated on this information:

"These developments are due to the fact that Cyprus is ideal for investment holding purposes. Examples to illustrate this are the absence of taxes on disposals of securities and the exemption (in most cases) of dividends received from abroad. That being said, I wouldn't rule out or ignore the high tech, franchising, wholesale or retail distribution sectors, which can effectively use Cyprus for tax planning purposes."

Despite the numerous positive reasons for companies to initiate new formations in Cyprus, potential investors will require high quality legal and support services from firms such as Prospectacy, to help them deal with any obstacles that may arise. These obstacles such as changes to taxes and legislation are best overcome with the help of a native based organisation.

Currently in Cyprus the recent changes to the legislation affected newly incorporated companies have included the imposition of additional penalties for the late payment of taxes and late submission of tax returns, and the introduction of a new fixed annual levy of EUR 350 to all active companies that are registered in Cyprus. Furthermore, the auditors will have to verify that all companies in question comply with all tax circulars issued by the Cyprus Tax Authorities.

Mauritius, given its reputation as a sound Financial Services centre has become the jurisdiction of choice for Investment Funds into Africa. The legal and corporate infrastructure and experience that the Jurisdiction has developed over the years within the investment fund business is proving to be very beneficial and useful for investment managers worldwide. CKLB in Mauritius is licensed by the Financial Services Commission; meanwhile, the firm has offices in Mauritius, Seychelles, Hong Kong and a London Rep Office.

Several key elements place Mauritius as a preferred location and platform for African investments. These include the country's modern and sophisticated legal system and corporate legislation, which are firmly embedded in the Mauritius business and financial services culture. Moreover, the depth of skills and knowledge of local professionals and firms actively engaged in the provision of investment fund services and structuring are among the best in the global fund industry.

Today, a number of international banks operate in Mauritius servicing hundreds of investment funds and investment companies locally. Mauritius also has a network of double tax treaties with many countries in the African continent. These include Botswana, Lesotho, Madagascar, Mozambique, Namibia, Rwanda, Senegal, the Seychelles, the Republic of South Africa, Swaziland, Tunisia, Uganda and Zimbabwe – with a few more under consideration of negotiation.

Christian Li, CEO of the CKLB Financial Services Group, referred to the International Arbitration Act 2008. "Mauritius is increasingly being used as an arbitration jurisdiction and, in particular, as a centre for international commercial and investment



Mauritius

Christian Li, CEO – CKLB Financial
Services Group
CKLB International Management Ltd.
+230 405 8800
christianli@cklb.com
www.cklb.com

arbitration in the African region," he said. "There is also no exchange control and Mauritius provides a very attractive taxation system wherein there is no withholding tax on dividends, and no capital gains tax is charged locally. Investors making use of a Mauritius resident company may also take advantage of Local Tax credit legislation currently in place."

CKLB's partners understand the particular requirements of investors and investment managers and, as a professional fund and corporate administrator, the firm's objective is to maintain a certain quality level and standard of service to clients. "The advantage of this is that we are able to provide a fully bespoke service to clients; meanwhile, we are in a position to work towards precisely what the clients want us to provide, rather than offering a standard service which may not necessarily suit every client," said Mr. Li.

He concluded: "We provide a one-stop-shop full service from initial structuring through to establishment and ongoing maintenance of investment companies and funds in Mauritius as well as other jurisdictions. We endeavour to meet our client requirements fully and promptly and, in many instances, this enables us to develop a closer professional and working relationship with promoters."

Mauritius is strategically located between Asia and Africa, and is a member of various organisations promoting and facilitating trades among the African countries such as SADC, COMESA and the AGOA.



Developing long term partnership
through quality and tailor made services

CKLB FINANCIAL SERVICES GROUP

MAURITIUS

LONDON

HONG KONG

SEYCHELLES

More than just another service provider, the CKLB Financial Services Group provides unparalleled services by delivering tailor made solutions to clients.

A people business with highly qualified professionals who understand well the requirements of private and corporate clients worldwide.

CKLB provides the following services :

- Multi jurisdictional Company Formation
- Corporate Management, Administration and Secretarial services
- Corporate and Back Office Accounting
- Establishment of Trusts and Trustees Services
- Private Equity Fund structuring, Formation and Administration services
- Private Wealth structuring & Family Offices
- International Cross border Corporate structuring
- International Capital Market and Brokerage services

CONTACT : Kathleen Lai ✉ kathleenlai@cklb.com
Christian Li ✉ christianli@cklb.com

Licensed by the Mauritius Financial Services Commission

CKLB International Management Ltd

P.O Box 80, Felix House
24 Dr Joseph Rivière Street, Port Louis, Mauritius
☎ (230) 405 8800 ☎ (230) 405 8818

Author: Mr. Geoffrey Magistrate

As I drive to the office I can see Cyprus' progression from past to present. I pass the Amathus ruins dating back to 1100 B.C. a time when the Romans and Phoenicians established trading routes using Cyprus as a bridge between the east and the west. As I approach the downtown, I pass two giant construction cranes on the site of the first high rise twin luxury apartment buildings being built. Finally, I see that construction is well underway on the new 350 Million Euro deepwater Marina, one of two new Marinas being built. Cyprus has a permanent population of fewer than 1 million and 2-3 million tourists visit the island each year.

A former British Colony, Cyprus' legal system mirrors the British model. English, although the second language to Greek, is spoken by most. Before Cyprus joined the EU in 2004, Cyprus was considered an offshore jurisdiction with a tax rate of 4.25% applied to all offshore companies. This low rate combined with an extensive network of double tax treaties (DTT's) made Cyprus a very popular jurisdiction for companies wishing to conduct their operations offshore. After extensive negotiations with the EU and OECD a flat 10% tax was enacted on all companies regardless of whether they did business in Cyprus or abroad. Hence Cyprus became an on-shore jurisdiction but still managed to keep many of its favourable tax advantages and enact several new ones.

Cyprus has the lowest corporate tax rate of all EU member countries which combined with an extensive network of double tax treaties has made it one of the primary destinations of choice for



Cyprus

Geoffrey Magistrate, General Manager
Mossack Fonseca & Co. Cyprus
+357 25 274 000
cyprus@mossfon.com
www.mossfon.com

setting up international operations. This has made Cyprus especially popular for businesspeople wishing to invest in Eastern European countries such as Romania, Russia and Ukraine.

The tax reforms enacted in 2002 are in full compliance with the OECD and the EU and have enhanced the reputation of Cyprus as a respectable international business centre. Cyprus is not subject to the defensive measures proposed by the OECD on harmful tax practices such as inclusion in black lists, non deductibility of expenses and other discriminatory measures. In fact, since joining the EU, according to the Department of Registrar of Cyprus Companies, over 115,000 Cyprus companies have been registered, an average increase over the past five years of more than 200% annually from pre-accession levels. Cyprus companies also continue to enjoy the benefits from an ever increasing number of DTT's – at last count 45 treaties with new negotiations underway with several Asian countries.

Mossack Fonseca is pleased to announce we offer Cyprus International Business Companies to our clients. Cyprus IBC's can engage in any lawful business in any country and can carry on transactions in any currency. A Cyprus holding company, subject to certain conditions, is exempt from corporate tax in Cyprus. Being an EU country with a very favorable tax regime, Cyprus provides one of the most attractive gateways to doing business in Europe and beyond, whether for trading or investment reasons.

Mossack Fonseca is a leader in corporate services with industry experience since 1977. Our research oriented professionals specialize in Company Formations, Trust Services for professionals, On and Offshore Structures and Commercial Law.



Company formations provided by our local offices in the following jurisdictions:

Republic of Panama British Virgin Islands
British Anguilla Nevada USA The Bahamas
Samoa Seychelles Hong Kong Cyprus



MOSSACK FONSECA & CO. (Headquarters - 24 hour service)
Mosson Building, 54th Street, Panama, Republic of Panama
Tel: +507 205-5888 / 206-9400 Fax: +507 263-9218
Email: mf@mossfon.com



Panama

Ilianne Krupnik, Partner
Owens & Watson
+507 300-0422
ikrupnik@owenswatson.com
www.owenswatson.com

Panama's dollar-based economy rests primarily on a well-developed services sector that accounts for three-quarters of GDP. The country's services include operating the Panama Canal, logistics, banking, the Colon Free Zone, insurance, container ports, flagship registry, and tourism. Panama is a financial services jurisdiction with fast incorporation and post-incorporation processes. The country is a Spanish language jurisdiction, so it is incredibly important that the necessary legal documents are processed by firms who practice and deliver high quality legal services in the languages of Latin America.

For companies wishing to become incorporated in Panama by availing of Owens & Watson services, the full process can be accomplished quite quickly in just 72 hours.

Owens & Watson provides a full range of international company formation services. The firm's tax-efficient company formation is mixed with trusts, private foundations and assistance for the opening of transactional and private banking accounts.

"We are distinguished for our expertise since 1991 in the asset protection, estate planning and inheritance needs, covering the creation of entities in

its various forms for example, corporations in Panama, Belize, Costa Rica, BVI and other jurisdictions, and limited liability companies and limited partnerships under different levels of taxation," explained Ilianne Krupnik, partner at Owens & Watson.

The typical incorporation service offered by Owens & Watson involves the sending of the Articles of Incorporation to the Public Registry of Panama for incorporation. Owens & Watson coordinates the stamping and reception of the registered public instrument containing the constitutional documents. These documents are sent to the client along with a Certificate from the Public Registry, assignment of subscribers' rights, share certificates, power of attorney and incumbency.

There is likely to be a surge of companies looking to become incorporated in Panama as a result of the projected future increase in port activity in the country. Economic growth will be bolstered by the Panama Canal expansion project that began in 2007 and is scheduled to be completed by 2014 at a cost of \$5.3 billion (about 25% of current GDP). The expansion project could more than double the Canal's capacity, enabling it to accommodate ships that are too large to traverse the existing canal.

Businesses wishing to avail of incorporation services in a new or unknown territory may require the help of a legal entity that possesses the necessary legal knowledge of the area in question. Owens & Watson always operates in the best interests of clients and stays well informed of all business trends and changes on the horizon. Currently the firm suggests that any new businesses looking to establish themselves in Panama should be aware that the government has announced that there might be some changes in the law on corporations (Law No. 32 of 1927), which has not been amended since 1927.

PricewaterhouseCoopers Legal (PwC Legal) Taiwan was established in 1970 under the name of Chen & Chu. Over the ensuing three decades, the firm grew rapidly and now has more than 2,200 distinguished partners and dedicated business professionals. It provides a full range of business advisory services to leading global, national and local companies, as well as to public entities.

Services

In order to act as a reliable partner in your business growth and to assist your business to respond dynamically to changes in the business environment, PwC Legal Taiwan customises and establishes a full suite of services, products and resources tailored to your needs.

Industries

In order to respond actively to changes in today's business environment, the firm has established multidisciplinary teams of industry specialists. Its industry teams bring together professionals with industry knowledge and experience tailored to the needs of particular industry sectors.

Locations

Moreover, PwC Legal Taiwan has six service branches island-wide strategically located throughout Taiwan in order to provide the most comprehensive, responsive and proactive services to clients.

Background

Following its establishment in 2000, PricewaterhouseCoopers Le-



Taiwan

Lawrence S. Ong, Director
PricewaterhouseCoopers Legal (PwC Legal) Taiwan
+886 2 2729 6666 ext.23818
lawrence.s.ong@tw.pwc.com
www.pwclegal.com.tw



gal in Taiwan formed an alliance with PricewaterhouseCoopers Taiwan and has since worked alongside financial and accounting specialists in the areas of accounting, tax, corporate finance, company start-up and human resource management – to provide clients with a full range of legal services that are distinctive from what the traditional legal markets can offer.

As a member of the PwC international network of firms, PwC Legal has more than 1,300 corporate lawyers in more than 63 countries providing legal consultation services in many investment locations around the world – to cope with the globalisation of the financial markets. The international network area includes, among others, Europe, Middle East, South America, and South East Asia.

Meanwhile, PwC Legal Taiwan, has more than 50 legal personnel located in Taipei and Hsinchu. With their specialised knowledge and extensive experience, they provide professional legal consultation services in areas such as Capital Markets, M&A, Corporation, Securities, Litigation, Intellectual Property and Employment Law.