

Korpus Prava

LAW & TAX

Registration and administration of companies
FAQ



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1. Why do I register a company in an offshore or low tax jurisdiction?

The main purpose of incorporation of a company in an offshore or a low tax jurisdiction can be:

- Asset protection;
- Tax burden relief;
- Increase of flexibility for attraction of foreign investments and carrying out international transactions.

2. Where is the best option to register a company?

The choice of jurisdiction for company incorporation depends on your purposes.

Cyprus, for examples, is a low tax jurisdiction and is an efficient tool for asset protection. This country offers tax advantages for distribution of dividends, interest and royalties. Cyprus boasts the Europe lowest corporate tax rate of 12,5% and permits the use of nominee shareholder services.

The British Virgin Islands (BVI) is a jurisdiction with zero tax rate (the corporate tax is replaced by an insignificant annual government fee). The main advantages of this classic offshore are no requirements for bookkeeping and submission of reports/statements, light tax control. In accordance with the laws of BVI registered companies are required to keep all documents in the office of the registered agent or at any other place outside the British Virgin Islands. The main disadvantage is that the territory does not have double tax treaties.

Hong Kong is a perfect place for trading activities and is especially efficient for carrying out business with Asian countries.

The classic offshores are the British Virgin Islands (BVI), Belize, Panama, Seychelles, Cayman Islands, Channel Islands, the Bahamas Hong Kong and others.

The classic European holding jurisdictions where a taxpayer can enjoy low tax rates on dividends, interest and royalties are Cyprus, UK, the Netherlands, Austria, Switzerland, Denmark, Luxemburg and Liechtenstein.

3. When do double tax treaties come useful?

When payments are made from a company resident of country A to a company resident in country B and the first company (the payer) is planning to pay to the second company (the recipient) funds taxable with a withholding tax as per the local laws of the first company registration (dividends, interest, royalties), in such case a double tax treaty between the countries of the contracting parties is required. Such double tax treaties allow companies to avoid the withholding tax.

4. How do I choose a company name?

A company name must be approved by the Registrar of Companies prior to incorporation. A name can be of your choice provided it is not similar to the name of the existing company registered with the Registrar.

Every country has its own rules for company names. In Cyprus, for example, a company name must end in Limited or Ltd and there are certain restrictions on the use of such words as Corporation, International, Group, Financial and others.

Korpus Prava can provide you with a list of approved names, which can save time on name approval procedures.

5. How long does it take to register a company?

Every jurisdiction has different deadlines for incorporation which are set by the Registrar of Companies. In case all the due diligence is in place details of the registration can be provided: in Cyprus – within 7 working days, in BVI – within 4 working days, in Hong Kong – within 8 working days. Transfer of documents to the company owner can take about 2 weeks depending on the additional documents/procedures.

6. What is registered address/ registered office for?

Registered address/ registered office is a legal requirement for state registration of a legal entity of any jurisdiction. Registered address is recorded in the corporate documents of an entity.

7. What is business address?

A business address of a company is the address of the factual location of the company/client, it is the place from which the management of the business is carried out. It is different from the registered address of a company. The business address should be mentioned to prove that the company is an international one (being an International Business Company) and does not carry out business in the country of its registration. The business address cannot be the registered address of the company, neither can it be the address of the service provider/ company's administrator.

8. Where should correspondence be sent?

The address for correspondence is defined by the company owner depending on his needs. The address of the local administrator is often mentioned for these purposes provided the administration offers correspondence processing services.

9. What is share capital?

Share Capital is the funds that are initially invested by the owners/shareholders in the company in order to launch company operations. Share capital defines the minimum amount of the company assets that secure the interests of the creditors.

Some countries have requirements for the minimum share capital. For example, in Malta, the minimum share capital is 1,164.69 EUR, in Latvia, it is 2.000 LVL and in Andorra, it is 6.000 EUR.

The duty to pay the share capital is in such countries as Malta (the minimum amount of the paid share capital is 20%), in Latvia (the minimum paid up share capital is 50%) and in Andorra it is 100%.

10. Who shall I put as a contact person?

The ultimate beneficial owner appoints his contact persons on certain matters. Instructions regarding the company shall be accepted only from the duly authorized contact persons as provided for by the administrative agreement. In the best interest of the UBO the service provider shall not accept any communication or instructions from a third party (being any other person different from the UBO himself or the duly authorized contact person). Large transactions shall be subject to a written consent of the UBO.

11. Who is a shareholder, what are his rights and duties?

A shareholder is a natural person or a legal entity that owns one or more shares in the share capital of a company. The shareholder is entitled to participate in the general shareholders' meetings, to vote and to take decisions on all the matters on the agenda.

12. What is a Shareholders Agreement?

A shareholders agreement is an agreement between the shareholders (all of them or a certain number of them) that can regulate various aspects of the relationships between them, including the relations of the parties to the shareholders' agreement in the course of running the company, duties of the parties to vote in a certain way at a general shareholders' meetings, the procedure of settling of various possible disputes and other matters.

The shareholders' agreement is regulated by the provisions of the civil law and provides the parties with greater freedom when formulating the duties and liabilities of the parties than the corporate law would provide.

13. What is a "nominee" shareholder?

A nominee shareholder is a natural person or a legal entity that acts as a holder of shares in trust for the benefit of the ultimate beneficial owner for the purpose of confidentiality as the details of the UBO are not registered with the Registrar. The use of fiduciary services is possible in the common law jurisdictions. The details of the shareholder are mentioned in all the corporate documents and in the Registrar of Companies, no record is made that such shareholder is a "nominee".

14. What is a Trust Deed?

A trust deed is a civil legal agreement for trustee services that establishes a relationship between the "nominee" shareholder of the company and its ultimate beneficial owner. According to the trust deed the shares of the company are held by a person (a nominee shareholder) in trust for another person (the UBO).

15. What is an Undated Instrument of Transfer?

An undated instrument of transfer signed by the nominee shareholder is a tool that allows the parties to effect the transfer of shares from the nominee shareholder to such a person and on such a date as advised by the UBO in his own interests.

An undated instrument of transfer is a business custom aimed at protection of the rights of the UBO in case of illegal actions of the nominee shareholder.

16. Who is the Ultimate Beneficial Owner, what are his rights and duties?

An Ultimate Beneficial Owner is a natural person, the real owner of the company that receives that benefits from its operation or is a person who fully controls the company's business and in whose interests the company is run. In case the nominee shareholder is not used the registered shareholder and the UBO are one and the same person. Where the registered shareholder is a legal entity the ultimate beneficial owner shall be the final owner of the last entity.

17. What is the responsibility of the nominee shareholder?

- The main principle of the trustee service is that the trustee is obliged to carry out the management of the assets in trust with due care and in strict compliance with the provisions of the trust deed and of any laws regulating the trustee service, including any AML legislation in place for the jurisdiction.
- The obligations in a transaction entered into by the trustee who has exceeded the authorities granted to him (the ultra vires actions) or who has breached the established limitations shall be borne personally by the trustee in full. In such case it is the UBO that becomes the beneficiary in the transactions made by the trustee in breach of the trust deed but with the use of the assets transferred into trust.
- According to the Contract Law breach of the terms of a trust deed enables the innocent party (the UBO) to claim via court full recovery of the damages done by the trustee; such damages being the result of the breach.
- The UBO is entitled to review the assets transferred into trust. The UBO is entitled the priority right over the assets as a security under the lawsuit.
- Following the civil proceedings one can bring up criminal proceedings against the trustees; and the judge is entitled at its own discretion to make a court ruling for imposing a fine or an imprisonment.

18. What guarantees does the UBO have?

The major guarantees of the UBO are:

- Protection by the law, including the criminal liability of the trustees.
- Business reputation of the trustees and corporate service provider, personal communication.
- Liability insurance.
- Trust Deed as a guarantee.
- Additional documents.

19. How confidential is information on UBO?

Where a nominee shareholder the details of the UBO are not recorded in the corporate register. Details of the UBO are disclosed only to the nominee shareholder and to the administrator of the company, to the bank during account opening, and in other cases where the UBO requires so himself. In any case transfer of information is made from the UBO. The details of the UBO are kept by the nominee shareholder and the administrator as a trade secret. The said users of such data are not allowed to disclose information except for the cases provided by the law. The law permits to disclose information on the UBO only upon the court order or the decision of the Attorney General.

20. What happens in case the UBO dies?

It is commonly accepted that in case of the death of the UBO the assets in trust shall be kept by the trustee and shall be managed by the trustee in favour of the heirs of the UBO. A different procedure of asset management shall be further agreed by the parties.

21. Who can be appointed director, what are the rights and duties of the director?

A director is a person that carries out the management and control of the company, his duties are statutorily established, its actions are regulated by the incorporation documents and internal resolutions of the company. It carries out the functions of

the executive body. A director can be a natural person or a legal entity. Appointment and removal of directors is made by the shareholders.

For some jurisdictions it is advisable to appoint a resident director (in case of the Board of directors it is advisable that 50% thereof is consisted of the resident directors) for the purposes of further confirmation of the resident status.

22. Why do I need a secretary?

A secretary is a part of corporate governance and appointment of one is a statutory requirement in some jurisdictions, e.g. in Cyprus and in Malta. The secretarial duties can be carried out by a local natural person or a legal entity. Its appointment and removal is made by the Board of Directors. The company secretary has certain statutory duties and responsibilities, among which are: preparation of materials and minutes of the meeting of the Board of Directors; compliance with the corporate legislation and regulations as well as corporate documents of the company; arrangements for the shareholders' meetings; keeping of the statutory registers and the like.

The secretarial service that Korpus Prava offers includes:

- Provision of Registered Office.
- Preparation of the Incumbency Certificate.
- Preparation of the Share Certificate.
- Keeping of the Corporate Register.
- Signing and archiving of documents.
- Receipt and archiving of correspondence.
- Preparation and execution of resolutions/decisions.
- Preparation and execution of annual general meetings.

23. What is maintenance of the company?

The maintenance includes:

- Company incorporation procedures.
- Assistance with the running of the company, with the changes in its structure.
- Fiduciary/representation services.
- Legal support and, if required, secretarial services.
- Procedures provided for by the laws.

Korpus Prava also provides:

- Consulting on general matters of local legislation and international laws.
- Provision of advice on bank account operation, assistance with communication with the bank.
- Follow up and advice on the deadlines for the regular procedures required for maintenance of the company.
- Provision of timely exchange of information and preparation of documents according to the statutory requirements.

24. What is the Administrative Agreement?

The administrative agreement is an agreement for services of the maintenance of the company which regulates the relations between the Administrator and the UBO of the company. The agreement contains the terms and conditions for provision to the company of services of the secretary, director, the nominee service in order to manage and control the running of the company in accordance with the information provided by the UBO to the administrator, as well as provision of the registered address and other services that may be required in order to run the company in the jurisdiction it has been registered.

25. Why should an auditor be appointed?

In certain jurisdictions the requirement to make audit is directly provided by the law (e.g. Cyprus, Malta, Hong Kong, UK).

26. What countries require accounting and auditing and what countries do not?

Accounting and auditing are often mandatory in onshore jurisdictions, including the low tax jurisdictions (Cyprus, UK, Latvia and others). The countries that have zero tax rates (BVI, Belize, Seychelles and the like) do not impose such requirements for the International Business Company's (IBC).

27. What are the incorporation documents?

The incorporation documents of a company are the memorandum and articles of association of thereof.

28. Is it mandatory that the company has a bank account?

Opening of a bank account shall be required where the share capital must be paid up prior to the incorporation of the company.

A bank account can be set up both in the country of incorporation or in any other jurisdiction.

29. Who is a signatory?

A bank account signatory is any natural person who manages the bank account, it is a user authorized to give instructions to the bank for carrying out transactions on the accounts by means of the system and vested with the right to execute banking documents.

30. What is internet banking?

Internet banking is a system of distance banking services aimed at processing and transmission of electronic documents and/or other electronic data. It is used to enjoy banking services.

31. What are the criteria for the residency of the company?

It is generally accepted that the residency of the company is defined by the place of its registration. In common law jurisdictions there is an additional criterion where the residency is defined by the place of the management and control of the company.

32. What is an apostille?

An apostille is an internationally accepted standard form of legalization of documents for the purposes of submitting such apostilled document in the countries that accept this form of legalization.

Apostille does not require additional certification or legalization of a document. It is accepted by official authorities of all the countries parties to the Hague Convention of 1961. Apostille needs not to be used in case there are legal grounds that cancel or simplify the legalization of the documents.

33. What Due Diligence documents and details must be provided on natural persons?

The following documents should be provided:

- Passport copies.
- For RF citizens a copy of the internal passport (all pages).

The passports must be valid and bear all the details, signature and the photo of the holder. The copies must be clear colour, passport size (not A4 size). The copies must be certified by an authorized person.

- Proof of address (a recent utility bill).
- A reference letter (from a bank or from a respectable legal or audit firm).
- A short CV (Clear outline that connects logically a person and a company, as well as the source of funds invested into the company).
- A copy of the education/qualifications documents.

34. What Due Diligence documents and details must be provided on legal entities?

The following documents should be provided:

- Good Standing Certificate – original under apostille.
- Incumbency Certificate – original under apostille.
- M&AAs – true copy.
- Certificate of Incorporation – true copy.
- An updated Corporate Register – signed by the secretary or director, his signature to be certified.
- Any Share Certificates (valid and cancelled).
- Any appointments, resolutions.

- Trust Deeds (if any).
- Transfers of beneficial ownership (if any).
- Financial Statements, if any.
- All necessary filing, if any.
- Letter of Undertaking.
- Website.

Where there is a chain of companies, we must request such data on every company and every natural person in the chain.

35. Questions on the company to be incorporated

The following documents should be provided:

- Detailed description of the activities.
- The major clients, suppliers.
- Related companies (if any).
- Proof of activities: business plan, contracts.
- Website.

In the case of opening a bank account:

- The purpose of opening of the account.
- Annual turnover.
- Annual income.
- Cost of the assets of the company.
- Source of funds that will be invested in the company's turnover.
- Monthly incoming payments: amount, number of transactions, counteragents, grounds for payments.
- Monthly outgoing payments: amount, number of transactions, counteragents, grounds for payments.

36. Why do I need to give a detailed description of the activities of the Company?

The detailed description of the activities of the Company is a requirement set out by the Registrar of Companies of each jurisdiction to which a company is registered, in this way the authorities have the ability to avoid having companies which will be incorporated for illegal purposes and which activities fall out of the scope of the companies business. In most of the situations this is a requirement which needs to be satisfied by the compliance departments of banks and administrative service providers, so they may have detailed knowledge of what activities the Company has been incorporated for.

37. Why am I asked to provide due diligence for the UBO, signatory, director, shareholder?

This information is compulsory by law, as it is a requirement which obliges the person or entity registering a new Company to obtain such information. It is important to note that this applies only for Director and registered Shareholders. The information for the UBO and Signatory are only disclosed to the service provider which is obliged to have such details in file and to the banking institution at which the Company will have an account with.

38. Can I skip some of the Due Diligence I was requested?

It is an important requirement to be provided with all Due Diligence in order for all sites to be in compliance with the laws and regulations imposed by the authorities and by the internal rules of each corporate service provider.

39. I cannot provide a utility bill as a proof of my residential address. What do I do?

If providing a utility bill is impossible at this stage we shall kindly ask you provide an alternative (to be decided on a case-by-case basis).

40. I cannot provide a bank reference letter from a bank. What do I do?

As an alternative we can accept a reference letter from a reputable audit or law firm (e.g. one of the Big Four). A reference letter must be in English and be addressed to Korpus Prava.

41. What language must be the documents I provide?

All documents must be provided in English. Where a document is not in English a certified translation must be provided by a qualified translator.

42. Can I take a photo of the documents (by mobile and other devices)?

Only the scanned copies are accepted. The scanned copies must be colour, clear quality, leaving no extra marks/signs on the document, the documents must be scanned as the actual size of the document is (e.g. passport must be scanned as its actual size it).

43. What laws require the provision of due diligence that has been asked by the administrator of the company?

- The Fiduciary Law N. 196(I)/2012 (The Law Regulating Companies Providing Administrative Services and Related Matters of 2012).
- The Law 188(I)/2007 (The Prevention and Suppression of Money Laundering Law).
- The AML Directive DI144-2007-08 of 2012 (The Directive of the Cyprus Securities and Exchange Commission for the Prevention and Suppression of Money Laundering and Terrorist Financing).
- The EU Directives.
- The First Directive (Directive 91/308/EEC of 10 June 1991) on the prevention of the use of financial system for the purposes of money laundering.
- The Second Directive (Directive 2001/97/EC of 4 December 2001) on the prevention of the use of financial system for the purposes of money laundering.
- The Third Directive (Directive 2005/60/EC of 26 October 2005) on the prevention of the use of financial system for the purposes of money laundering and terrorist financing. It is technically amended by Directive 2008/20/EC.



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