

inBrief

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Choosing the Right Offshore Jurisdiction

By James Bowden | 19 April 2022

Wealth and estate planning that make use of so-called offshore trust structures are popular. Such structures are useful for many reasons, including to support individuals and families who are seeking a change in residency, and to offer longevity, predictability and security that is not always available in one's home country. They can more readily adapt to beneficiaries in different and changing jurisdictions, and in the right circumstances they can offer tax efficiencies. If you have determined that an offshore structure is right for you, you will find that there are many offshore jurisdictions that could potentially be suitable for your needs. This inBrief looks at how to go about evaluating and selecting the right jurisdiction for your structure.

A brief summary of some of the factors you should take into account follows:

- **A zero-tax environment.** Many jurisdictions offer this.
- **Reputability.** This is really a colloquial catch-all for how well the jurisdiction adopts and implements FATF guidelines, OECD (and US) tax and reporting rules, transparency and level of cooperativeness of local government and courts, among other things. The international reputation is not a matter of perception, but much more importantly, it is a matter of how willing other professionals and financial service providers will be to deal with entities formed in that jurisdiction.
- **Regulatory compliance.** This is related to reputability. A jurisdiction that is compliance-focused will be more readily welcomed by banks, investment managers, insurers, land and asset registries, and others that will interact with the entity you establish. In this context, compliance refers essentially to thorough disclosure of beneficial ownership and processes to keep it up to date and verifiable, and accessible to legitimate government inquiry (not to the public, necessarily).

The Author



James Bowden

Managing Director - Toronto
jbowden@afridi-angell.com
Tel: +1 416 601 6815

James is the founder and Managing Director of Afridi & Angell's Toronto office, which primarily services the private client space in local and international estate planning, and creating structures using trusts and foundations.

Areas of expertise include succession planning, the use of trusts locally and internationally, tax planning, asset protection, tax-driven changes in residency, and estate structuring. The Toronto office also continues to provide corporate and commercial support in many instances

- **Quality of service providers.** Offshore structures such as trusts can only function properly if they are serviced by qualified, experienced, reliable service providers, in particular trust companies acting as trustees (others include accountants, lawyers, private bankers, investment managers, insurance advisors). It is of great benefit to establish a trust in a jurisdiction with a mature market of well-established service providers.
- **The legal environment.** Offshore jurisdictions tend to have well-developed laws regulating their trust industry, and many have developed issue-specific specializations. Depending on your priorities and what you wish to achieve with your trust, you may be better served by one jurisdiction or another. For instance, the Cook Islands have a relatively strong position protecting Cook Islands trusts against foreign claims. The British Virgin Islands offer a special regime for so-called VISTA trusts¹, which have advantages when the trust acts as a holding vehicle for shares in an underlying company, especially where the underlying investments are relatively high risk. The Cayman Islands have a special regime for so-called STAR trusts, which allow for non-charitable purpose trusts, useful for creating “orphan” structures, for example. There are other examples, and many other uses for VISTA and STAR trusts².
- **The courts.** This is really part of the legal environment, but it deserves a separate mention. The track record of the courts in upholding the local laws, and their ability to address trust-related claims in a manner that is sophisticated and predictable is an important factor.
- **Privacy.** This is also part of the legal environment, but deserves a separate mention too. Robust, modern privacy laws are important to ensure that your sensitive personal and financial information is not misused or disclosed to third parties or the public or potential bad actors. It is worth clarifying that “privacy” does not mean “secrecy”, and that any reputable jurisdiction will have detailed beneficial ownership disclosure requirements, and will have international reporting obligations and exchange-of-information treaties, including among tax authorities. The purpose of an offshore structure is not to conceal information from governmental authorities who have a legitimate interest. This was the case decades ago and is the source of negative stereotyping of offshore jurisdictions which continues in the media to this day, ignoring the enormous reforms in transparency, regulation and international disclosure that have occurred over the years.
- **Political stability.** A long track record of peace and good order and rule of law is critical. Trusts for wealth and estate planning purposes are often intended to last for many years, over multiple generations.
- **Cost.** The cost of establishing and ongoing maintenance of the trust or other structure is a legitimate focus, of course, but in our view is not the primary driver. The other factors listed above are more important, and, cost tends to be relatively similar across the board, with limited exceptions.

In our view, among the factors listed above, by far the most important factors to focus on are the legal environment, and the quality of trust service providers. The legal environment is important because the objectives for the trust may be better served by the laws of one jurisdiction or another. The quality of trust service providers is important not only for the reasons summarized above, but also because a good service provider brings with it its own standards and safeguards around privacy (and the IT infrastructure and culture of compliance that goes with that), often at a level higher than that required by local laws.

¹ Trusts created under the *Virgin Islands Special Trust Act 2003 (as amended)* (British Virgin Island)

² Trusts created under the *Special Trusts (Alternative Regime) Law 1997* (Cayman Island)

A good service provider will also attract qualified personnel, will be responsive, service oriented, and will be helpful and capable whenever new demands arise.

If you have identified jurisdictions that are reputable, and which have a legal environment that supports your needs, and which have quality service providers available, you can consider some of the softer tie-breaker considerations, such as time zone for ease of communication, and physical accessibility in the event you wish to personally visit from time to time to meet your trustees or other providers.

During the planning phase, it can be useful to weigh the pros and cons of different jurisdictions for a number of reasons. Good planning sometimes entails utilizing a structure with elements in multiple jurisdictions (a private investment company owned by a trust, each in different jurisdictions, for example); and, it can be helpful to consider an alternate jurisdiction in case you wish to re-domicile your trust (most offshore trusts are portable from one jurisdiction to another, if the trust deed allows for it).

The above is not intended to be a definitive list, and specific factual context must always be taken into account. The factors set out above should usually present a reasonable starting point.

If you are considering an offshore trust structure or have questions about whether it may be suitable for you, or which jurisdiction may suit your needs, please contact us and we will be happy to help. ■

Afridi & Angell

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