The Benefits Of Establishing An Offshore Presence

At some point in a company's life cycle may surface the curiosity of whether the company, its subsidiary or any of its assets should be offshore. The truth is many companies that can potentially benefit from an offshore presence fail to grasp the opportunity, which is perhaps due to not appreciating the benefits available. Here we discuss why a company might consider moving or establishing an offshore presence.

For all of the reasons discussed below, a Cayman Islands company may be used to establish an offshore presence. The Cayman Islands is a British Overseas Territory, and is considered a stable, trusted and secure offshore jurisdiction by international parties. Its legal system is based on British common law, and the Privy Council in England is the final court of appeal from the Cayman Islands courts.

A Cayman Islands company can be incorporated in less than 48 hours, requires at least one director (which can be a corporation or person, and can be from anywhere in the world), and at least one shareholder (which can be a corporation or person, and can be from anywhere in the world). There is no requirement for annual shareholder meetings to be held. There is also no requirement for audited accounts or financial statements to be prepared, however proper books and records must be kept to show a true and fair view of the company's activities.

International Business
Fundamental to any move offshore must be a desire to either (i) conduct business with international parties or (ii) to make the company an attractive investment target for international investors. If the answer is “no” to both of these questions, then all consideration of an offshore adventure should stop.

Tax
The Cayman Islands has no corporation tax, withholding levies or exchange controls. Compliance and know-your-client information must be provided on each shareholder holding more than a 10% voting interest and on each director. If the company is looking to conduct international business, it may be appealing from a tax perspective to separate the revenue it generates onshore, as compared with revenue generated from international clients and/or sources. Since the Cayman Islands has no corporation tax or withholding duties or levies, it may prove efficient for a subsidiary of the company to be a holding or trading vehicle for the internationally sourced and generated business. Relevant tax codes
will need to be considered of both the relevant onshore jurisdiction where the company is incorporated, but also the jurisdiction into which the sales are taking place to ensure what level of profits can be repatriated from that foreign jurisdiction. It may be efficient for that foreign profit to be returned to a Cayman Islands entity to be used for further investment or other activities, rather than returned to the company in its onshore jurisdiction. The onshore jurisdiction may have specific rules relating to controlling and owning foreign companies and therefore some onshore structuring might be necessary or desirable as a preliminary step.

**Intellectual Property**

Intellectual property generally becomes more valuable the more it is commercialised. Once commercialised, any decision at that point to transfer the ownership offshore may attract a costly exit liability. Consequently, where an intellectual property asset has the potential for international sales and commercialisation, consideration should be given to transferring that asset offshore to a jurisdiction such as the Cayman Islands prior to any commercialisation. Patents and trademarks registered in the United Kingdom and/or the European Union can be extended to the Cayman Islands by a simple registration procedure in the Cayman Islands.

**Joint Ventures/Mergers/International Investment**

Where the company is looking for an international investor or considering the sale of an asset to an international investor, that investor would likely request that a Cayman Islands company is used as the investment vehicle, or to act as a holding company as owner of the asset to be purchased. Why is this? International investors look to deploy capital and get exposure and returns (eg. on U.S. located businesses and technology), but are sometimes reluctant to invest directly into the specific entity. Having a company’s assets held by a Cayman Islands company, is attractive to international investors who see the structure as being pre-programmed for sale and/or investment - the company can be purchased and fit easily into nearly any corporate group structure, or can be used as the entity for a joint venture among the various parties.

The Cayman Islands has a merger statute which is largely similar to the equivalent Delaware statute, and which provides appraisal rights for dissenting shareholders. An important distinction is that, for various reasons, the litigation risk to challenge mergers is nil in the vast majority of cases. By doing so, the Cayman Islands legal framework provides certainty and shareholder protection simultaneously. For this very reason, take private transactions have been effected using Cayman Islands companies.

**Initial Public Offerings**

Cayman Islands companies are listed on stock exchanges around the globe and are therefore well recognised by international investors and rating agencies. Using a Cayman Islands Company as the listing vehicle may allow certain exemptions to be relied upon with respect to the relevant stock exchange.

**Financing**

International banks are well accustomed to lending to and taking security from Cayman Islands entities. The Cayman Islands is a creditor friendly jurisdiction where, so long as valid security has been granted, those secured assets do not fall part of the assets available to any liquidator of the chargor – this is a feature many creditors welcome and appreciate.

**Mind, Management and Control**

For corporate or tax reasons, a Company may need to demonstrate that sales activities occur from within the Cayman Islands. Through Cayman Enterprise City a Company may utilise existing personnel offshore while simultaneously demonstrating an offshore presence. The Cayman Enterprise City is a knowledge based special economic zone located in the Cayman Islands, and attracts companies into its various “parks”, namely: the internet park, the media park, the commodities and derivative park, the science and technology park and the maritime services park. Since 2011 over 160 companies have established a presence within the Cayman Enterprise City.