



International - offshore trusts / international trusts

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The word offshore means different things to different people. The word trusts may have different connotations depending upon the jurisdiction in which they are created, and the perception of the person confronted by them.

An English trust lawyer will recognise valuable and legitimate benefits for clients when advising on offshore trusts; a tax inspector in a civil law country may (wrongly) assume that a trust is a device to evade tax and/or launder money.

A number of illustrious institutions (viz OECD, IMF, EU) are focusing on the offshore world with an eye to money laundering devices; more subtly they are looking to find tax cheats..

Whatever views may be held about the intentions and assumptions of these authorities, or the politics which underpin them, since offshore trusts are bound to come into contact with the onshore world where such institutions are very powerful, it is vital that advisers and clients alike are mindful of the reception which offshore trusts will receive.

Since the word offshore has taken on a negative meaning in some quarters, the word international is now invariably and indiscriminately used in its place.

What is offshore ?

Originally offshore extended to tax havens off the shores of the UK and the US and by extension to trusts or companies set up in those jurisdictions. But presently offshore extends to jurisdictions and operations in jurisdictions which are very much onshore. Countries such as the Netherlands, Switzerland, the UK and Belgium all have many features that would now be considered offshore.

The jurisdictions can be broken down into five classes as follows (although some of them will straddle these classes):

- High tax countries offering special incentives and privileges (eg Switzerland, Ireland, UK, and the Netherlands);
- Countries that have no income tax (eg the Bahamas, Bermuda, the United



Arab Emirates and Monaco);

- Countries that tax income that arises locally (eg Hong Kong, the Lebanon and Uruguay);
- No or low tax countries which enjoy a treaty network (eg Cyprus, the Netherlands and Switzerland);
- Low tax centres offering special incentives (eg Guernsey, Jersey, and Mauritius).

What to look for in an offshore / international centre ?

Principally:

- A sound Legal and Administrative System: if litigation ensues in that territory it is important that a good legal and administrative infrastructure exists to determine the issues;
- Political and Economic Stability. The risk of nationalisation or expropriation must be weighed up: Panama suffered, at one stage, as a result of such fears;
- Professional, Commercial and Banking Infrastructure. Good lawyers, accountants, trust officers and banking facilities play an important part in deciding where to site an offshore trust;
- Communications. Time zones and reliability of the communications system may be vital; and travel to the jurisdiction must not be difficult for beneficiaries and advisers although e-mail use is breaking down these communication issues;
- Language. It is vital that those participating in the trust structure can speak to and be understood by those responsible for trust assets;
- Quality of Administration: sound regulation of trustee service providers and experience;
- Tax Treaties: increasingly, effective use of trusts will rely on the existence of an appropriate tax treaty network.

Choice of law

The law which a settlor (or testator) chooses as the proper law of a trust may

be most important in determining whether the settlor's (or testator's) plan will ultimately succeed. Succession laws may prevail over a choice of proper law. Gifts or transfers to a trust may be clawed back. Certain trust jurisdictions may not support and uphold a gift if that gift is made contrary to certain public policy principles; others will. These are complex matters of private international law.

Civil law countries often restrict alienation of an individual's property outside the immediate family; these rights may be limited to individuals in the direct bloodline, or extend to spouses. Similarly the characterisation of an entity (such as a Liechtenstein Anstalt or a Foundation) may create complications, especially in common law countries. Both Liechtenstein Anstalts and Foundations contain elements that approximate them to both companies and trusts, which may mean they are characterised as either. For example, a Liechtenstein Anstalt relies on founders' rights; and a Liechtenstein Foundation has beneficiaries but also a Board of Directors. Moreover, as creatures of civil law, Liechtenstein Anstalts and Foundations are prone to attack from individuals wielding reserved property rights which will be understood, if not respected, by a Liechtenstein court.

But certain common law countries are now looking to the advantages of Foundations set up under local statutes (the Bahamas and Jersey have enacted Foundation legislation, for example).

Meanwhile a number of common law jurisdictions have enacted statutes, or rely on case law, which preserve the integrity of a trust and the settlor's/testator's intentions, over rights wielded by heirs.

But the integrity of such trusts may still be undermined by claims of fraud, money laundering, creditors' or spousal rights.

What is an offshore trust?

There is no comprehensive definition of an offshore trust. To most people it means a trust which is governed by the law of an offshore jurisdiction and/or which is resident in an offshore jurisdiction.

Monaco and offshore trusts

Monaco is not a trust jurisdiction. It is a civil law jurisdiction the law of which does

not provide for trusts. Historically Monaco will have had difficulty recognising or giving effect to a trust under local law, which explains why a holding company is invariably interposed for such structures. Happily this has changed because Monaco has acceded to the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and their Recognition. Special mention should be made of Monaco Law 214 of 1936 (as amended), but it would be wrong to confuse this law with the world of offshore trusts. Rather it is essentially a means for residents of the Principality to set up trusts by Will – whilst inter vivos trusts are possible they are most unusual in the context of Law 214 - recognisable and enforceable in Monaco whereunder an individual resident's national succession and trust laws can be imported to ensure that their assets devolve on their death in a manner consistent with the rules and customs they understand. A Law 214 trust is not therefore to be confused with the plethora of offshore or international trusts available in any number of other jurisdictions.

This said, there are a number of organisations in Monaco authorised to manage offshore / international entities (ie entities constituted elsewhere) such that individuals or corporations in the Principality often act as trustees of a trust set up in another jurisdiction.

The Monegasque government is known to be looking at ways to regulate these professionals although it must not be forgotten that such persons already require a licence to carry out business in the Principality and anti-money laundering legislation and procedures already strictly apply to such service providers. An excellent self regulatory body (AMPA) exists to assist corporate providers in Monaco.

A regulatory framework designed for Monaco's offshore / international trust business is to be encouraged not only because this will give even greater security to clients and advisers who seek to use the services of professionals in the Principality, but also because institutions such as the IMF and OECD increasingly require comfort that an appropriate degree of regulation applies if a particular activity, capable of being associated with unscrupulous money, can be carried out.

Those most serious offshore / international jurisdictions have introduced stringent "know your client", and regulatory procedures directly for their trust service providers. Similar legislation

and regulatory controls exist in Monaco for the protection of clients who work with Monaco corporate service providers (which extend to Monaco trust companies), and we can expect specific, albeit light, regulation of trust business before long in the Principality coupled with more positive changes designed to create certainty for trusts and trust assets in Monaco. Adhering to the Hague Trust Convention has proven to be an important step in that process.

How can we help?

Our office has existed in the Principality since 1979. We are the only English based international law firm in the Principality. Between our Monaco, Dubai, Moscow and London offices we have the strength and depth to offer a full legal service to both local and international clients. We aim to advise our clients in an efficient and cost effective manner and with a particular emphasis on commerciality and confidentiality.

We speak a number of languages including English, French and Icelandic. We have a client base which includes entrepreneurs, entertainers, financial or banking services companies, fund managers, trust companies, sporting personalities and international families from many jurisdictions.

Beyond its London, Dubai, Moscow and Monaco offices LG has strong relationships with law firms throughout the US, Asia and around the world. These relationships enable us to advise comprehensively on any matters with an international dimension.

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