LAVECO®

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NEWSLETTER

The Newsletter of LAVECO Ltd. – 15 years in Hungary

The difficulties of opening bank accounts

Establishing an offshore company is a relatively simple matter. What was considered something of a luxury in the 80s and 90s, and, even in the business world, thought of only as something for the rich, is now available to almost everyone. It is almost as simple as going to the nearest supermarket, finding the right section, and buying a litre of milk.

Establishing a company, or having a company established, is similar. If you go to the right service provider, you can receive the necessary paperwork in a relatively short time - generally from one hour to one month. This is even the case if we include the fact that certain jurisdictions require various documents for the establishment of companies, such as reference letters from lawyers or banks, a detailed description of the proposed activities, CV for the owners and beneficiaries, as well as a recent utility bill as proof of residential address.

The opening of bank accounts is not such a simple matter. Although technically there is no difference between the bank accounts operated by offshore and so-called "onshore" companies, a significant number of banks are averse to the idea of opening accounts for offshore companies. So, in what ways can a USD or EUR account opened for an offshore company differ from one opened for an onshore company? The answer is that it cant, as, in practice, exactly the same banking transactions are performed in both cases. So what is the reason for the banks' reluctance? If we try to analyse the process with bankers, then we come across numerous explanations. Here, I would like to highlight four of those, and although this is not a definitive list, I would dare to say that these are probably very close to the truth.

1. Most of the clients are foreigners, and can be difficult for the banks to contact. The majority of clients operating offshore companies prefer not to open bank accounts in their own country, which means that in numerous cases the bank in which the account is opened is far away from the client's place of residence. The banks see a certain amount of risk in this.
2. There is no so-called "state control" over the majority of offshore companies; they do not have to file accounts. In this way, the bank can not accurately judge the companies' true activities, turnover and profits.
3. The media almost exclusively paints offshore companies in a negative light, and this has an effect on the thinking of those controlling the banking world. They are reluctant to cooperate with something which is branded like this.
4. The campaigns against money-laundering and resulting laws have placed the whole banking system under extremely strict regulation. Clients must be suitably identified at the time of opening the account, which includes asking for many documents which have nothing to do with the activities of the company. Suspicious transactions must be monitored and reported to the inspectorate of banks. And the banks must be petrified of anything suspicious. Naturally, bearing in mind at all times the basic principle that the most suspicious matters are ones which are not suspicious!

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I will leave it to the reader to judge the practical usefulness of the above. I am assuming that anyone reading these words is a practising company manager or owner. I am sure you could give me 101 reasons why the logic employed above does not stand up. It is a fact, however, that anti-money-laundering laws have pushed bankers to the very brink of paranoia. They are afraid of losing their jobs, of witch-hunts by the authorities and of facing possible prison sentences, and nobody in the banking world wants to take a risk. In many cases the "I'd rather flush away the children with the bath water" logic has taken over.

So, the position for anyone wishing to open a bank account for a newly established offshore company is not an easy one. Naturally, if there is a bank where the client already has contacts, then things are considerably easier. This is particularly so if the person involved already holds a private or company account there. In such cases there is much more trust towards the new company, as the bank already has a sort of reference.

The person who just walks into the nearest bank is in the worst position. Particularly if the bank happens to be one which doesn't have much experience in the handling of accounts for foreign companies. Or, for example, in the case of Cyprus, where banks will only open accounts for foreign companies if the client provides a "Letter of Undertaking" from a firm of lawyers, accountants or auditors in Cyprus. They also ask for this if the client didn't buy the company from a service provider in Cyprus. The banks have no choice in this matter, as it is a requirement of the Central Bank of Cyprus.

Clients sometimes ask me why we charge a fee for the opening of a bank account. My reply is always very simple: because it is a service, and in the business world this has a price. Companies which provide such services have to be very well prepared, and this preparation requires a considerable level of investment in both personnel and materials.

It is also necessary to pay for the convenience, which we serve up to you on a plate. And if you do some simple calculations, it probably actually works out cheaper! Let's suppose that you have to travel to the foreign bank and spend at least one working day there (if not more) filling out the necessary papers etc. Travelling there and back takes a day each way, and you need one working day in the bank. This means you can not go at the weekend, and so you can not take advantage of the reduced weekend air fares. Let's calculate the expenses. Full price air ticket - as there is no Saturday night included - approx. 700 USD; two nights in a hotel - approx. 200 USD; transfers to and from the airport - approx. 50 USD; transport in the given city - approx. 50-100 USD; meals for 3 days - approx. 100 USD. And these are just the minimum expenses for one person. So if there are to be 2 or 3 signatories on the account... And what happens if the bank refuses to open an account, and the trip was in vain? Not to mention the 3 lost working days...

Don't take the risk! The answer is simple: give LAVECO a call.

British Virgin Islands - the latest step in the process of changes

During the 90s and probably the first half of this decade the British Virgin Islands (BVI) was one of the most popular jurisdictions. This fact is backed up by the figures for the number of companies registered, in which BVI was the market leader.

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On January 1st 2007, those companies which were established prior to January 1st 2005 on the basis of the earlier company law - the International Business Companies Act of 1984 as amended, IBC Act - were automatically re-registered in accordance with the terms of the company law passed in 2004, the Business Companies Act. This will not have a serious effect on the life and operation of companies, and they do not have to take any active part in the changes, as the re-registration does not involve any administrative requirements, but is merely a change in the law under which these companies fall. It is important to note that if these companies issued bearer shares prior to January 1st 2005, they do not have to place them in custody in the BVI until December 31st 2010. After that date, however, all bearer shares must be placed in the custody of a company specifically authorised for this purpose. It is also important that for the 2007 tax year, the annual tax for such companies, provided their maximum issuable capital does not exceed 50 000 USD, will be 350 USD; from 2008 to 2010 this figure will be 600 USD, then from 2011, 800 USD, regardless of the annual financial turnover and profit of the company.

It is a requirement of the company law of 2004 that these companies keep a Register of Officers and Directors in the registered office, and that the main company documents and minutes, or at least copies of them, also be available at the registered office. The registered agent must be informed of any changes in the above documents and must receive copies of any new company documents or minutes within 15 days. It is also necessary to keep the registered agent informed about where the original documents are held.

Delaware: administrative changes in the new year

As from January 1st 2007 two significant changes will be introduced into the administration of the Corporation (limited company by shares) type of Delaware company.

In accordance with paragraph 132 of the Delaware General Business Code, all registered agents who represent more than 50 companies must maintain a so-called database file for every company, and from time to time the agent must refresh the file. This file must contain, separately, the following information:

1. The name of the company director, officer, employee or appointed agent whom the registered agent can, if necessary, contact. This must be a natural person.
2. The business address of this person.
3. The telephone number of the individual concerned.

This database remains exclusively in the possession of the registered agent. The information does not have to be reported to any authorities or state organisations - it is purely recorded in the registered office.

The other important change concerns the tax return. The tax return for 2006, which is due by March 1st 2007, can no longer be filed as before using the green filing form. Registered agents will now have two alternatives to choose from; they can either request a postal form from the Secretary of State, or can file them with the authorities electronically.

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The majority of agents will, naturally, choose the electronic method, as this is significantly more convenient to administer and prepare.

It is important to note that these changes only affect share companies (corporations). According to the information we have at present, no changes are planned in the operation of Limited Liability Companies (LLCs). It can be expected, however, that in the future LLCs will also file their tax returns electronically.

The role of company directors

Many of our clients take advantage of our optional company director services. A number of names exist for this service in international practice, but the original name used in Anglo-Saxon terminology is "nominee director".

From the legal point of view, however, there is no such thing as a purely nominee director, that is, a person who is only a director on paper. Similarly, it is not possible for two separate people, one nominally and the other in reality, to fulfil the same role. The person who appears on the corporate documents as the director is the real and true director of the company.

This is still the case even if the director involved issues a limited or general power of attorney to any of the people involved in the company. None of the duties or obligations of the director are transferred to the attorney; the attorney is merely acting on behalf of the director. There are certain cases, however, such as meetings of the board of directors, where the director must, in practice, appear and vote in person.

In addition to the preparation of the various powers of attorney and minutes of meetings, the most common task of the directors is the signing of the company's commercial contracts. This is an everyday occurrence in the world of international companies. As the directors we provide are native English speakers, the contracts that they sign are also in English. If a document was prepared in any other language, then it must be accompanied by an English translation.

It is very common for the place of signing of such contracts to be some European capital or city. This, however, is only possible if the director was actually there at the time when the contract was signed. If not, then only the place of residence of the director (where he actually lives) can appear in the contract.

It is also important that the real signature of the director appears on the documents. If somebody else signs the director's name - without his knowledge - then that is forgery, even if it is the shareholder or owner of the company who does it. This would also be rather pointless, as the director's signature can be ordered from any LAVECO office for a relatively modest fee; our colleagues send the documents to the director, who signs them and returns them by courier. If you would like to receive more information on this service, or would like to order this service, please contact our colleagues in one of the LAVECO offices listed below.

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