

Emerging Compliance Challenges for Hong Kong Companies in Offshore Jurisdictions

The evolving regulatory landscape in offshore jurisdictions presents both challenges and opportunities for Hong Kong companies



Offshore jurisdictions such as the Cayman Islands, British Virgin Islands (BVI), and Bermuda have long been favored by Hong Kong companies, including unlisted entities, for establishment of business vehicles within their groups, in view of their tax efficiency, confidentiality, and flexible corporate structures. However, recent international regulatory developments have introduced stricter compliance requirements, including economic substance rules, beneficial ownership transparency, and enhanced reporting obligations. Understanding these changes is crucial for those Hong Kong companies, as non-compliance can lead to financial penalties, reputational harm, and restrictions on global operations.

Cayman Islands: Governance and Compliance

The Cayman Islands has introduced significant regulatory changes, particularly concerning beneficial ownership transparency. The Beneficial Ownership Transparency Act, 2023, came into effect on July 31, 2024, consolidating previous regulations into a single statute. This new regime requires all legal entities, including previously exempt limited partnerships, to register beneficial ownership information. This update eliminates certain exemptions, meaning Hong Kong companies using Cayman partnerships must review their ownership structures to ensure compliance.

Additionally, private funds and investment vehicles now face stricter governance requirements, including mandatory annual board meetings and updated conflict-of-interest policies. Companies managing investment funds should assess their governance frameworks to align with these new expectations.

In addition to beneficial ownership registration, Cayman entities involved in relevant activities must demonstrate adequate economic substance. This includes maintaining local management and income-generating activities. Failure to comply can lead to substantial penalties.

BVI: New Filing Obligations and Transparency Rules

The BVI has introduced new filing obligations that will significantly impact companies operating in the jurisdiction. Starting in 2024, all BVI companies must submit annual returns with basic financial information. Hong Kong companies need to establish systems now to prepare for these filings, as failure to comply could result in penalties or the company being struck off.

Economic substance compliance remains a priority. Entities carrying out relevant activities, such as holding businesses, must file annual reports demonstrating local management and operational activities. Companies should ensure they understand the scope of these rules and maintain detailed compliance records.

Moreover, companies struck off before January 1, 2023, are now officially dissolved, and judicial restoration is possible until December 31, 2027. However, this process can be complex and costly, necessitating prompt action from companies with dissolved entities.

Bermuda: Preparing for Corporate Income Tax and Compliance

Bermuda is aligning with international tax standards by introducing a 15% corporate income tax (CIT) regime, effective from January 1, 2025. This marks a significant shift for the jurisdiction, which has traditionally been tax-neutral. Hong Kong companies using Bermuda entities must assess how this change will affect their tax planning and financial reporting.

Economic substance requirements in Bermuda mandate that entities conducting relevant activities maintain an adequate local presence, including staff and operating expenses. Additionally, updated beneficial ownership rules require entities to declare ownership information and submit annual economic substance declarations. Companies must ensure their compliance frameworks are sufficient to meet these obligations.

Why Hong Kong Companies Need to Know This

For Hong Kong companies, these developments are particularly important because offshore jurisdictions are often used to facilitate growth and manage risks. While these structures offer significant benefits, the rising compliance burden introduces challenges that cannot be ignored.

Non-compliance with offshore regulations can lead to financial penalties and reputational damage, restricting a company's ability to operate internationally. Furthermore, Hong Kong's Inland Revenue Department has increased scrutiny on offshore structures as part of broader efforts to combat tax evasion. Companies that fail to align their offshore operations with Hong Kong's tax and reporting requirements may face audits or enforcement actions.

Holding assets offshore through entities in the Cayman Islands, BVI, or Bermuda remains a practical choice for many Hong Kong companies. However, increasing compliance standards necessitate a structured approach to managing these offshore structures.

Economic substance regulations require companies conducting relevant activities to maintain local presence and document compliance efforts. Companies should periodically assess whether their activities fall under these requirements and seek professional advice for assurance.

Transparency is another critical area, with beneficial ownership rules tightening across jurisdictions, necessitating accurate and timely filings. Companies should ensure ownership records are updated and reporting deadlines consistently met.

Additionally, businesses involved in digital assets must register under the relevant frameworks in these jurisdictions to avoid enforcement actions.

The evolving regulatory landscape in offshore jurisdictions such as the Cayman Islands, BVI, and Bermuda represents both challenges and opportunities for Hong Kong companies. While these jurisdictions offer

flexibility and tax advantages, the rising compliance burden requires businesses to adopt a proactive approach.

By staying abreast with regulatory changes and habitually upgrading their internal control systems, companies can mitigate risks, avoid penalties, and remain efficient and compliant. Regular reviews of corporate structures, engaging professional advisors, and maintaining clear records are essential steps in safeguarding their ability to grow and compete in a regulated global market while enhancing a company's corporate reputation.

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