



## Offshore Jurisdictions: Sunny Places for Shady Business No More!

BY ANDREW JAMES PERKINS

**Offshore Jurisdictions are firmly embedded into the global economy. However, they suffer from a perception of lax regulation from the point of view of international regulators. In this article, the author seeks to dispel some of the common misconceptions surrounding the Cayman Islands with respect to secrecy, tax evasion, beneficial ownership, and money laundering activities.**

**W**hen I first told family, friends, and colleagues that I was moving to the Cayman Islands to work at

the Truman Bodden Law School, jealousy was expressed at the year-round good weather. There was no mention that June to November is hurricane season! Next, I was reminded that the Caymans were a shady backwater where money laundering was rife, company ownership was anonymous, and secrecy was paramount. This common misconception completely ignores the fact that the Cayman Islands and other offshore jurisdictions are firmly embedded into the global economy and are the destinations of choice for hedge funds, special purpose

vehicles, yacht and aircraft registrations, captive insurance companies, and international banking.<sup>1</sup>

Offshore jurisdictions account for up to \$36 trillion in untaxed wealth globally,<sup>2</sup> which naturally raises the hackles of the onshore financial and taxation regulators who condemn offshore jurisdictions' successes based upon a perception of a lax regulatory environment together with low or zero taxation. This unfairly ignores the innovative contributions that offshore jurisdictions make to the law in relation to trusts, banking, insurance, and financial and company matters, together with the quality service the international community is offered by jurisdictions such as the Cayman Islands. Offshore jurisdictions possess the necessary expertise to legislate to enhance legitimate business interests.<sup>3</sup> Provided such legislation meets internationally accepted legal and compliance standards, offshore jurisdictions should be left to compete openly on the global financial scene and to flourish legitimately in the sophisticated financial areas in which

they have acquired a speciality, without the continuous threat of sanctions and bad press.

Combating tax evasion and money laundering have become politically more important<sup>4</sup> as a result of the disclosures in the *Panama and Paradise* papers. The disclosures intensified the onshore world's fight against money laundering and tax evasion. Offshore jurisdictions are viewed as providing strong confidentiality, raising obstacles for anti-corruption investigations, offering opportunities for money laundering through corporate structures, and allowing criminal funds to be held away from tax authorities. This paints a negative image of an offshore jurisdiction which suggests that jurisdictions like the Cayman Islands are a sunny place for undertaking shady business. As this is not representative of the islands in which I live and work in 2022, in this brief article I seek to dispel some of the bad press surrounding offshore jurisdictions, particularly in relation to secrecy, tax evasion, beneficial ownership, and anti-money laundering provisions in Cayman law.

The Cayman Islands is founded on a political system that has enabled it to compete on the world financial markets. This is evidenced by the fact that the Islands are the jurisdictional home to 116,996<sup>5</sup> companies, 12,719<sup>6</sup> active mutual funds, and 110 banks.<sup>7</sup> Cayman's stability and constitutional legitimacy promote regulatory and tax advantages which have enabled both corruption and abuse to be better resisted than in many other offshore jurisdictions. Cayman has a significant incentive to fight against money laundering and other economic crimes and to demonstrate financial transparency to preserve the integrity of its market economy in highly specialised financial products.<sup>8</sup> The Islands have to demonstrate an increased level of regulation, particularly in relation to AML, CTF, and tax evasion, as international pressure has ensured that major financial jurisdictions will not tolerate or do business with poorly regulated "cowboy" states.

The level of perceived secrecy within offshore jurisdictions is detrimental in the eyes of the international regulatory community. Yet in most western democracies, confidentiality is deemed to be an essential feature of the bank/customer and lawyer/client relationship. It is understood that the laws for the protection of confidential information have existed onshore for many years. The principles enshrined in the common law in cases such as *Tournier*<sup>9</sup> and *Re A Firm Of Solicitors*<sup>10</sup> are routinely applied by the courts and regulators as if they had statutory authority as to when appropriate disclosures can be made. The Cayman Islands statute<sup>11</sup> regulating professionals' interactions with confidential information is broader than the common law gateways discussed above. The statute provides eleven avenues<sup>12</sup> under which potential suspicious activity, once detected, can be disclosed to the appropriate investigatory authorities. Such provisions render it virtually impossible for money launderers to escape liability, because of the perceived secrecy provisions, which arguably provide a more robust system than in the onshore world.

Tax havens, many of which are offshore jurisdictions, cost onshore governments between \$500 billion and \$600 billion in lost tax revenue annually.<sup>13</sup> It is not surprising, therefore, that corporate regulators around the globe are requiring corporations to employ tax planning behaviours where profitability is not moved to tax-neutral jurisdictions, and to seek a fiscal gain in the jurisdiction where the entity does business. Yet it must be remembered that the taxation codes of G7 jurisdictions allow for companies and individuals to structure their financial affairs to allow wealth to be held offshore. The international community needs to stop relying on the harmful concept of offshore tax policy and its morality and switch their approach to targeting abuses and underlying weaknesses within domestic tax frameworks.



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The Cayman Islands demonstrates compliance with OECD taxation standards by implementing domestic legislation which allows for specified financial account information gathered by financial institutions to be automatically shared with 60 partner jurisdictions on an annual basis.<sup>14</sup>

The lack of visibility as to the actual owners of an offshore business is a persistent criticism of offshore jurisdictions, where most registered businesses form part of a web of shell corporations. The Cayman Islands government and financial services industry initially resisted changes to their existing beneficial ownership regime whereby financial service providers collected and verified beneficial ownership information in compliance with *FATF Immediate Outcomes 24 and 25*. However, in 2019 the Cayman Islands enacted significant legislative reform introducing a public beneficial ownership register in compliance with evolving international soft law standards which had been enhanced in the EU's *5th Anti Money Laundering Directive*. There was clear recognition by Cayman that its practices needed to be more evolved to demonstrate a clear commitment to working with law enforcement and tax authorities to combat illicit activity. Offshore jurisdictions need to show that there is a culture of transparency that satisfies the three obligations (i) to know your customer, (ii) to ensure the provenance of funds, and (iii) to know the nature of the transaction.<sup>15</sup> The Cayman Islands are undertaking further reform in relation to their beneficial ownership commitments. Under the new proposals, the beneficial ownership regime would be codified into a single statute and expanded to include limited and exempted partnerships. Furthermore, it is expected that the proposals will require disclosure of the nationality of the beneficial owner, together with the mechanism by which control over the entity is held.<sup>16</sup> Such reforms would place Cayman ahead of the field and in compliance with the current direction of travel by the EU and FATF in relation to beneficial ownership regulation.

Mention money laundering and the conversation will frequently involve a discussion of the Cayman Islands as being synonymous with such practices. Reasons for this stem from the Islands' location, its growth in the financial services industry, and its perceived lax regulatory environment which allows such practices to flourish. In 2019, Cayman


underwent its fourth round of mutual evaluation by FATF, where concerns were expressed in relation to simplified measures and reliance upon third parties within the jurisdiction, which hampered the effectiveness of the AML regime. As a result of these findings, the Cayman Islands government committed to providing a robust AML framework and undertook steps to enact broad legislative reforms dissuasive to money laundering activity, and effective and proportionate to the Islands' position as a global financial centre. At the Enhanced Follow Up Report in 2021 and 2022, Cayman satisfied all of the actions required by the 2019 report and demonstrated an effective commitment to international standards for the imposition of adequate sanctions for AML abuses, and to effectively detecting and prosecuting cases of money laundering. Other offshore jurisdictions, such as the Bahamas, the Netherlands Antilles, and the British Dependent Territories, are following suit, enacting major legislative reforms to prevent money laundering and to protect the integrity of their financial systems to demonstrate that there is a culture of super-compliance offshore.

As a result of the reforms discussed in this piece, the Cayman Islands have begun to see some positive results. In the Tax Justice Networks annual secrecy ranking, Cayman has dropped from first to fourteenth<sup>17</sup> position, with onshore jurisdictions such as the USA, Japan, Germany, China, the Netherlands, and the United Kingdom appearing ahead on the list. The Cayman Islands is recognised in the 2022 survey as the eighth-largest investment destination in the world and, for such a seismic shift to have taken place, there must have been some recognition by the Tax Justice Network that Cayman is paying more than lip service and is demonstrating active participation in the fight against international crime. Effective standards of compliance have been important for institutional business and hopefully will lead to the Islands' removal from FATF's "grey list" in October 2022. However, the onshore world is still actively encouraging Cayman to take further steps to have effective sanctions in place where parties fail to file beneficial ownership information and to demonstrate that there are effective prosecutions of money laundering which are in line with the jurisdiction's risk profile. Failure to



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do so could result in Cayman being added to the EU's *AML High Risk Third Countries List*. Arguably this is an unjust outcome, given that the Cayman Islands financial regulator, CIMA, has imposed fines on the financial services industry of approximately \$7.7 million<sup>18</sup> since the enactment of the new legislative regime in 2019.

Is the offshore world now safe? In answering this question, this author believes there is a higher standard of due diligence required within the Cayman Islands than in any onshore jurisdiction. This comes at a significant compliance cost in order to demonstrate active participation against international crime. The Cayman Islands are not a sunny place for doing shady deals but a responsible, forward-thinking financial market with robust procedures for detecting and prosecuting economic crimes. The modern offshore jurisdiction not only requires a regulatory framework to support the financial sector, it also needs to enact legislation dissuasive to money laundering and ensure that capable regulators are in place to detect those who resist compliance and appropriately sanction them. Cayman ticks those boxes. To make this clear, however, CIMA might consider sponsoring a sign in the arrivals hall of George Town Airport to ensure that money launderers get the message that they are not welcome in the Cayman Islands. I might even suggest the slogan. 



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Andrew read law at the University of Wales Swansea and Cardiff and was called to the Bar by the Honourable Society of Gray's Inn and also admitted to the Roll of Solicitors. Andrew went on to practise in the United Kingdom in the fields of company and financial litigation before moving into academia. Andrew's research interests lie in financial law and regulation, particularly in relation to offshore jurisdictions.

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