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Offshore corporations & trusts: do you really need them?

To many people, corporations are essential tools in making money, discharging liabilities or owning assets globally; often in deep secrecy.

A corporation or trust is what lawyers call a "legal entity". Whereas a company does not eat, sleep or go to the movies, it may own just about anything you care to mention: bank accounts, stocks, bonds, investments, cars, boats, and even areoplanes. So may a trust (foundation).

The distinction between a "corporation" and a mere "company" is that the former is, by its very definition, a separate legal entity as opposed to an unincorporated, personally-owned company. A corporation may go bankrupt and leave creditors, including tax men, holding the short end of the stick. An unincorporated company will be inextricably linked to its owner(s). If an unincorporated company defaults on a debt or a payment, creditors may immediately turn to the owner and demand payment from him, which is a pretty good reason why you should never operate any business except from behind the protection of a corporation. That way, you are only liable for a loss up to whatever capital you have invested in the business, but no claim can be made against you personally in the event that the corporation folds or closes with a negative net worth.

Unless, of course, fraudulent conduct by the owner(s) or manager(s) can be proved. Only rarely are owners or managers held personally liable for losses stemming from fraud or gross misconduct, which you should take to read as - only in cases where criminal misconduct (or outright fraud) can be proved. Proving such claims may take years. This is the major reason why dejected creditors usually take their licks and abstain from pursuing the matter further.

Shares in a corporation have to be owned by

someone - or something. Usually, shares are held either by ordinary shareholders, by one or more other companies, institutions or trusts. But a corporation cannot own itself. Someone has to own the shares, which also means that someone may be taxed on the wealth represented by the value of the shares, or the dividends or even on the capital gains realized when the shares are ultimately sold (or the corporation is successfully liquidated).

Enter trusts - or foundations, as they are sometimes called. As opposed to a company or corporation, no one can own a trust. By definition, a trust is not only a separate, legal entity, but also "owns itself". No physical or legal person may "own" even the tiniest little share of the trust. And that, exactly, is why trusts are so phenomenal in their potential uses.

Let us say, for instance, that you live in a high-tax country with very strict tax laws. Every year, you have to file an income tax return. On this paper you will usually be obliged to make a full disclosure of all bank accounts, shares, and other assets that you own - under threat of severe penalties, including jail, for non-disclosure.

The solution to this is not to keep your assets in other countries, most high-tax countries tax their citizens on their global income and, accordingly, require that all assets (even non-taxable) be disclosed, regardless of where they happen to be. Even if you own, say, a loss-making company in another country, or a non-interest bearing bank account (well, they do exist) somewhere you will be legally obliged to disclose this fact on your income tax return.

Some countries, including the U.S., even demand that citizens disclose the beneficial ownership of shares, etc., to guard against such assets being legally kept a secret by having them officially registered as belonging to someone

else - like an attorney, for instance. The management of a trust can be two-tiered. On the top of the pile is the Protector, it is up to that person to make sure that the trust's charter is adhered to and that the rules laid down for the dispensing of the trust's assets are followed. The role of the protector is purely that of a supervisor with veto power over the trustees and power to fire them in his sole discretion. The day to day affairs of the trust are handled, not by corporate officers but by co-called trustees. The Trustee will make all the decisions concerning the investments and disbursements of funds made by the trust. If the trust wishes to open a bank account, or buy a yacht (in keeping with the trust's charter, of course) then it will be the board of trustees which has to arrive at this decision and sign the papers.

But, as you will already have guessed, the trustees may decide to sign a power of attorney to someone else who can then, in effect, do whatever he or she wishes on behalf of the trust, at his sole discretion - without having to ask permission.

Now, if you own the assets that you either do not wish to disclose or wish to guard against future seizure, confiscation or nationalisation by your home government, you may give your tactics a "vener of legality" bt conducting your financial affairs through the use of trust and one or more corporations.