



COMPLIANCE CHALLENGES OF ASSET HOLDING STRUCTURES

Legislation, most prominently the US Foreign Account Tax Compliance Act (FATCA) and the OECD Common Reporting Standard (CRS), as well as local regulation directly and indirectly linked to these (e.g. due diligence rules, accounting and reporting requirements etc.) are posing an additional challenge to financial intermediaries and most importantly to their clients. This is all the more the case when asset holding structures, such as trusts, foundations, companies, partnerships, private funds etc. are used. Reporting and disclosure rules have become omnipresent over the years.

Asset holding structures and their uses have been the subject of frequent media misrepresentation. This wrongly created the impression that such vehicles are primarily abusive and implemented for illicit purposes. The reality frequently looks different. In fact, most often the reasons to start an asset holding structure lie in private law and not in tax or confidentiality. Cross-border ownership and even more succession, is an area with many challenges to which legal entities may offer an appropriate answer. Such entities often overcome the limitations of classic private law instruments such as donations, wills, nuptial agreements, pledges or other security agreements. Structures have been created in this context for the last couple of hundred years and there is no reason to believe that this should change in the future.

Contrary to Switzerland, our "rival" financial centres are, almost without exception, pursuing a harmonised strategy that includes banking, asset management and structuring services. The handling of such legal vehicles established on the basis of their local laws is therefore usually more natural in these countries than it is in Switzerland. This is clearly a competitive disadvantage as there is almost no Swiss alternative to foreign structures, possibly with the exception of Swiss trustees. Indeed, almost a quarter of all assets booked with banks in Switzerland are held through legal vehicles. This should be reason enough to ensure that extra attention is given to the diverse regulatory and compliance issues, to ensure the proper use of structures.

How Mandaris can be of assistance in the area of asset holding structure compliance

Mandaris is specialised in the area of advisory and management of cross-border structures. The handling of the challenges related to such structures is the daily work of Mandaris' experienced specialists. Mandaris is therefore well positioned to assist you in the following areas, though this list is by far not a conclusive enumeration of the challenges:

- CRS and FATCA qualification of entities and related persons in accordance with the applicable local rules, documentation of tax residency on self-certification forms and filing of FATCA forms, as well as implementation of the reporting procedure
- Analysis of the tax residence of asset holding structures and of the consequences the daily handling may have on this (e.g. asset management, composition of the board of directors etc.)
- Review of the proper management of the relationships with the beneficial owner, client, entity etc., including with regard to meetings, instructions, agreements and other forms or declarations



- Evaluation of compliance and due diligence documentation with the aim of avoiding that an excess of documentation could expose a bank or asset manager to direct liability, e.g. based on the rules on constructive trustees
- Identifying the fine line between reserved powers and sham structures
- Compliance with mandatory accounting rules and required accounting principles in order to avoid unwanted disclosure or tax consequences and ensure efficient CRS and FATCA reporting
- Review of direct and indirect distributions and payments for adverse consequences (tax and otherwise)
- Ensuring that the due diligence documentation of several involved service providers is consistent

Even though the above challenges are based on separate supranational and local legislation that often seem unrelated at first sight, the consequences of these are often interconnected. The pristine management of asset holding structures makes the difference between illicit and legitimate structures.

Beside these FATCA/CRS specific advisory services Mandaris may also assist you in all matters related to application procedures to the financial markets supervisory authorities, the drafting and implementation of compliance procedures, forms and documents or other service agreements as well as on the outsourcing of certain compliance functions.

It has become common to own assets in more than one country, like holiday homes abroad or bank accounts, shares, companies or other investments. Cross-border ownership and even more succession, is however an area with many challenges.

Please do not hesitate to contact the author if you have any questions or queries.

Our office locations

Mandaris Ltd.
St. Alban-Anlage 46
CH-4052 Basel
Tel. +41 61 285 17 17
Fax +41 61 285 17 77

Mandaris Ltd.
Beethovenstrasse 49
CH-8002 Zurich
Tel. +41 43 344 33 55
Fax +41 43 344 33 66

Mandaris Ltd.
Bahnhofstrasse 23
CH-6300 Zug
Tel. +41 41 500 01 15
Fax +41 41 500 01 16

Mandaris Group (Malta) Ltd.
Forni Complex 1E, Level 2,
Pinto Wharf,
Valletta Waterfront
Floriana, FRN 1913
Malta
Tel. +356 2779 1900
Fax +356 2713 2410



The Author:

Alexandre von Heeren

Lic. iur., LL.M. (Intern. Banking, Finance and Insurance Law)

Managing Partner

alexandre.vonheeren@mandaris.com

Tel. +41 (0)61 285 17 17