

OFFSHORE COMPANIES IN PRIVATE INTERNATIONAL LAW

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The pervasive use of offshore companies in international trade and finance presents fundamental challenges to the established frameworks of private international law. These entities, characterized by a deliberate separation of their legal domicile from the location of substantial economic activity, disrupt traditional rules designed for nationally anchored legal relationships. This article examines the core legal challenges stemming from this disconnect, focusing on the determination of applicable law, the assertion of jurisdiction, and the recognition of foreign judgments.

Offshore companies in the context of private international law refer to legal entities utilized to create a conflict between the formal place of incorporation and the real seat of management or economic operations, thereby complicating the application of conflict-of-laws rules. Unlike standard corporations, offshore structures are defined by several pivotal characteristics that directly impact legal analysis: their primary purpose often involves optimizing tax liabilities, shielding assets, or achieving regulatory arbitrage; they are typically incorporated in jurisdictions adhering strictly to the incorporation theory while being controlled from states that may follow the real seat doctrine; and their operational substance is frequently minimal within the jurisdiction of registration, raising questions about their genuine connection to that legal system.

Private international law faces significant difficulties in categorizing and governing offshore entities, primarily centered around three interconnected issues.

1. Determining the applicable law (*lex societatis*); the conflict between the incorporation theory and the real seat theory creates uncertainty regarding which national law governs the company's capacity, internal organization, and director liability. An entity incorporated in a lax offshore jurisdiction but managed from a strict onshore state may be subject to re-qualification or non-recognition of its legal personality in the latter.

2. Establishing jurisdiction; the mobility and complex structure of offshore companies facilitate forum shopping, challenging courts in identifying an appropriate forum with a sufficient link to the dispute. Principles like *forum non conveniens* and rules on the defendant's domicile (whether based on incorporation or central administration) are tested, while anti-suit injunctions may lead to parallel proceedings and conflicting rulings.

3. Recognizing and enforcing judgments; courts are often reluctant to

enforce foreign judgments against offshore entities on grounds of public policy, especially if the judgment disregards the corporate veil or if the original court's jurisdiction is deemed improper due to the company's lack of real ties to that forum. Enforcing such judgments is further hampered by the difficulty in locating and attaching assets concealed within layered transnational structures.

The challenges posed by offshore companies are of critical importance to the coherence of the global legal order. They undermine legal certainty for creditors and contracting parties, obstruct effective judicial redress, and can facilitate illicit activities such as fraud and money laundering. Conversely, addressing these challenges through evolving international standards - such as the OECD's Base Erosion and Profit Shifting (BEPS) actions and the Common Reporting Standard (CRS) - promotes transparency and the "substance-over-form" principle. These initiatives encourage a gradual harmonization of approaches, pushing towards a more resilient private international law framework capable of integrating globalized yet substantively anchored business entities.

The effective governance of offshore companies within private international law remains a pressing task for legislators and courts worldwide. It requires balancing respect for corporate autonomy and jurisdictional sovereignty with the imperative to prevent abuse, ensure fairness, and uphold the rule of law in cross-border affairs. Future developments in international cooperation and legal harmonization will be decisive in bridging the gap between legal form and economic reality.