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Foundation Companies in the Cayman Islands

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Foundation companies are a welcome addition to the complement of legal structures provided in the Cayman Islands. The foundation company may be used for many purposes including the management of property, the conduct of a business, the benefit of a family or to fund philanthropic projects.

The foundation company is a company with a few modifications. Some of the germane features are set out below.

Foundation Company Requirements

For a company to be a foundation company, the requirements are that -

- (a) it is limited by shares or by guarantee, with or without share capital;
- (b) it has a memorandum that -
 - (i) states the company is a foundation company;
 - (ii) generally or specifically describes its objects (which may, but need not, be beneficial to other persons);
 - (iii) provides, directly or by reference to its articles, for the disposal of any surplus assets the company may have on winding-up; and
 - (iv) prohibits dividends or other distributions of profits or assets to its members or proposed members as such; and
- (c) it has adopted articles; and
- (d) its secretary is a qualified person. A

qualified person is a person who is licensed or permitted by the Companies Management Law (2003 Revision) to provide company management services in the Cayman Islands.

An existing company may apply to the Registrar of Companies (the "Registrar") to become a foundation company and if the Registrar is satisfied that the foundation company requirements will be met, a new certificate of incorporation will be issued containing a declaration that it is a foundation company.

Management Structure

A foundation company has a very flexible management structure. It may provide for its management by directors (however called) or their delegates, or give rights, powers and duties of any type to its members, directors, officers, supervisors, founders or others. It may appoint a supervisor, who may be required to oversee the directors and exercise any or all of the powers usually vested in members.

Unless otherwise provided, duties under the constitution are owed to the foundation company only. Powers given by the constitution of a foundation company may be given for the benefit of either the foundation company or the donee or for any other purpose and may be subject to any condition.

Members

Unlike a traditional company, a foundation company does not need to have members if

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its memorandum permits or requires and it has one or more supervisors. If the company originally had members, it may cease to have members, and this will not affect the foundation company's existence capacity or powers.

Bylaws

A foundation company's constitution may provide for the making and altering of bylaws for the foundation company. The bylaws do not form a part of the constitution and are not a public document. Persons dealing in good faith with a foundation company are not required to consider its bylaws or look into compliance by directors or others with its bylaws. The bylaws may guide the exercise of discretions by the directors and supervisors, and would usually have information as to the beneficiaries and their interests in the foundation company.

Registered Office and Secretary

A foundation company's registered office should be at its secretary's business address. A foundation company shall at all times have a qualified person as its secretary. The foundation company shall not accept an asset contribution that is gratuitous or in consideration of a share issue unless its secretary has given the foundation company notice that there appears to be no objection to its

acceptance under the Proceeds of Crime law, the Terrorism Law and the Money Laundering Regulations.

Each foundation company shall keep at its registered office a register of its supervisors.

Other Offshore Foundations

The foundation company will serve a similar purpose to the foundation which exists in offshore centers such as St. Kitts, the Bahamas, Jersey, Isle of Man, and Guernsey. However its structure is different. Other offshore centers which have foundations have created a new legal entity reminiscent of the civil law foundation. Cayman chose to modify the well-known company structure with long standing legislation and case law rather than create a new set of rules to govern the new structure, which would presumably take years for the courts to construe and build jurisprudence.

Trusts

The foundation company may be used as an alternative to a trust. The differences between a foundation company and a trust include the following:


- (i) There are no trustees in a foundation company;
- (ii) the foundation company is a legal entity while a trust is not;

(iii) unless otherwise stated, the directors of a foundation company owe their duties to the company and not to the beneficiaries;

(iv) there is no doubt as to the validity of a foundation company because its registration is conclusive evidence of its validity. The validity of a trust may be challenged on various grounds;

(v) the default rule in foundation companies is that the beneficiaries have no rights;

(vi) there is complete flexibility with regard to the arrangements for management and supervision.

The foundation company has clear advantages and will provide great flexibility with regard to its purpose, management and supervision. It may be customized to meet the founder's objectives and may assist in achieving the founder's desired tax consequences. 



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