

KEY FACTS

FOUNDATION COMPANIES

IN 2017, THE CAYMAN ISLANDS FOUNDATION COMPANIES ACT INTRODUCED A LEGAL VEHICLE DESIGNED TO COMBINE THE ADVANTAGES OF A TRADITIONAL COMPANY WITH MANY OF THE CHARACTERISTICS COMMONLY ASSOCIATED WITH COMMON LAW TRUSTS AND CIVIL LAW FOUNDATIONS.

Cayman foundation companies are separate legal entities capable of owning assets, entering into contracts, and incurring liabilities in their own name. Unlike an ordinary company, a foundation company may be structured to operate without shareholders and can be established for specific purposes, charitable or non-charitable objectives, or for the benefit of designated beneficiaries.

This combination of corporate personality and structural flexibility makes foundation companies a popular solution for private wealth planning, fiduciary structures, succession planning, philanthropic initiatives, investment holding arrangements, and a variety of commercial transactions.

KEY CHARACTERISTICS

- > Legal personality separate from its founders, directors, beneficiaries and other stakeholders
- > Ability to hold assets in its own name
- > May be established with or without beneficiaries
- > May operate without members (shareholders) once properly constituted
- > Distributions or dividends to members are not allowed
- > Provides limited liability protection
- > Offers significant flexibility in governance and succession arrangements
- > Can function like a trust while retaining the familiarity of a corporate structure

As a result, foundation companies are often viewed as a useful alternative to traditional trust structures, particularly for individuals and families from civil law jurisdictions where trust concepts may be less familiar.

FORMATION AND LEGAL REQUIREMENTS

A foundation company may be newly incorporated or converted from an existing Cayman Islands company. To qualify as a foundation company, it must:

- > Be limited by shares or by guarantee, with or without share capital
- > Include in its constitutional documents a statement that it is a foundation company
- > Set out its objects or purposes
- > Specify how any surplus assets will be distributed on a winding-up
- > Prohibit the payment of dividends or distributions to members
- > Adopt articles of association
- > Appoint a secretary licensed or otherwise authorised to provide company management services in the Cayman Islands

Upon satisfying the statutory requirements and paying the applicable fees, the Registrar of Companies will issue a certificate confirming the entity's status as a foundation company.

GOVERNANCE AND CONTROL

The day-to-day management of a foundation company is carried out by its board of directors. However, its constitutional documents can be tailored to allocate powers and responsibilities to a range of persons, including:

- > Founders
- > Directors
- > Supervisors
- > Members
- > Protectors
- > Other designated persons

The governing documents may regulate matters such as:

- > Appointment and removal of directors and supervisors
- > Amendments to the constitutional documents
- > Approval of major decisions
- > Oversight of management activities
- > Enforcement of duties and responsibilities
- > Winding-up procedures
- > Distribution of assets

This flexibility allows the governance framework to be customized to reflect a family's succession wishes, commercial objectives, or regulatory requirements.

Memberless Structures

One of the distinguishing features of a Cayman foundation company is its ability to exist without members. Provided the constitutional documents permit it and a supervisor remains in place, a foundation company may cease to have any shareholders while continuing to exist as a legal entity. This "ownerless" feature is often attractive where neutrality and independence are important and makes foundation companies particularly useful in fiduciary and commercial structures.

Beneficiaries and Enforcement Rights

Unlike a trust, beneficiaries of a foundation company do not automatically possess rights against the directors or over the assets of the foundation company. Instead, governance and enforcement rights are generally reserved to persons identified within the constitutional documents, such as members, supervisors, founders, or other designated 'interested persons'.

This approach can provide greater certainty in governance arrangements and may reduce the risk of disputes arising from direct beneficiary intervention.

Asset Holding and Investment Flexibility

Foundation companies are very flexible holding and ownership vehicles. There are generally no statutory restrictions on the types of assets they can hold, unless restrictions are imposed by the constitutional documents themselves. Accordingly, foundation companies may hold:

- > Investment portfolios
- > Shares in private companies
- > Family business interests
- > Real estate

- > Intellectual property
- > Digital assets and technology-related investments
- > Other commercial or investment assets

USES OF CAYMAN FOUNDATION COMPANIES

For Succession and Estate Planning

Foundation companies are widely used as long-term wealth holding vehicles. A founder may transfer assets into the foundation company and establish governance mechanisms to ensure that wealth is managed and distributed in accordance with family objectives across future generations. This can be particularly effective where families seek continuity in the ownership and management of assets following the death or incapacity of a family member.

As an Alternative to Trusts

For individuals unfamiliar with common law trust concepts, a foundation company can provide a more intuitive structure. The vehicle is a company with separate legal personality, many civil law clients may find it more familiar than a traditional discretionary trust while still achieving many of the same succession and asset-holding objectives.

As Part of Private Trust Company Structures

Foundation companies are frequently used as the holding vehicle of a Private Trust Company (PTC). This arrangement allows a family to maintain influence over trust administration while avoiding the need for individual ownership of the PTC shares. The foundation company effectively acts as an independent shareholder, creating a stable and long-term ownership structure.

For Family Business Ownership

Where a family business represents a significant portion of family wealth, a foundation company may serve as a holding vehicle for the business shares. The structure can facilitate succession planning, preserve control arrangements, and reduce the risk of fragmentation of ownership over time.

For Philanthropic and Charitable Purposes

Foundation companies can be established to pursue charitable, philanthropic, educational, religious or social objectives. Unlike traditional charitable trusts, they offer the benefits of separate legal personality while maintaining a purpose-driven structure.

For Special Purposes and Commercial Transactions Support

The flexibility of foundation companies has led to their adoption in a range of commercial and financial transactions, including:

- > Structured finance transactions
- > Investment fund structures
- > Ownership of management or founder shares
- > Digital asset and blockchain projects
- > Token issuance structures
- > Special purpose holding arrangements

Their ability to operate independently of shareholders is often particularly attractive in these contexts.

TAX CONSIDERATIONS

A foundation company established to conduct its activities primarily outside the Cayman Islands will typically be incorporated as an exempted company.

The Cayman Islands does not impose income, capital gains, inheritance, estate or withholding taxes. In addition, exempted companies may apply for a tax undertaking from the Cayman Islands Government, providing assurance against the future introduction of certain direct taxes for a specified period.

As with any international structure, founders, beneficiaries and stakeholders should obtain tax advice in all relevant jurisdictions to understand the tax consequences applicable to their particular circumstances.

- ▶ PEOPLE LED
- ▶ TECH ENABLED
- ▶ GLOBAL COVERAGE
- ▶ TAILORED SERVICE

- ▶ 1,100 STAFF
- ▶ 25 JURISDICTIONS
- ▶ 47,000 ENTITIES
- ▶ \$177BN AUA

- ▶ FUNDS
- ▶ PRIVATE CLIENTS
- ▶ CORPORATE CLIENTS
- ▶ MARITIME

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